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United States
Court of Appeals
for the Ninth Circuit

FREDERICK I. RICHMAN, Appellant,

vs.

DA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

DA TIDWELL, Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

Transcript of Record

In Three Volumes

VOLUME I.

(Pages 1 to 316, inclusive.)



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als from the United States District Court for the Southern
District of California, Central Division

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ES AND ADDRESSES OF ATTORNEYS

Appellant, and Cross-Appellants,
Derick I. Richman:

GRADY, NOSSAMAN & PAULSTON,
630 Statler Center,
Los Angeles 17, California, and
JOSEPH T. ENRIGHT,
541 South Spring Street,
Los Angeles 13, California.

Appellee, and Cross-Appellant, Lyda Tidwell:

MARTIN, HAHN & CAMUSI,
WILLIAM P. CAMUSI,
701 Security Title Insurance Bldg.,
Los Angeles 14, California.

Appellees Hallberg, Receiver, etc., et al.,

JOHN WHYTE,
756 South Broadway,
Los Angeles 14, California. [1*]

United States District Court for the Southern District of California, Central Division

No. 13,742-T.

A TIDWELL, et al.,

Plaintiffs,

VS.

DERICK I. RICHMAN, et al.,

Defendants.

MEMORANDUM OF DECISION

s is an action between Lyda Tidwell and
rick I. Richman each of whom is a trustee
rutor under a Declaration of Trust. Plaintiff
rought suit asking this Court to permit her to
he Declaration of Trust and for a distribution
e assets of the estate to the trustors. She claims
the Trust is a voidable one because of (1)
e influence in the inception; (2) fraud in the
ion; (3) fraudulent and improper manage-
and (4) that after the establishment of the
it has been fraudulently and wrongfully man-
by the defendant to such an extent that he
d be removed as agent of the trustees and the
should be terminated.

a pretrial conference the Court ordered a trial upon the single issue of whether there was influence or fraud or both which moved plaintiff to execute the Declaration of Trust. It was held by the Court that if plaintiff prevail on this issue,

accounting which would necessarily be involved. Plaintiff has objected to this procedure on the basis that a showing of certain acts of mismanagement (which she claims she is able to show) will run back to the things which were done before she executed the Trust Declaration, and will show certain privileges of management which defendant has under the Trust Declaration were in fact severed as they are in order to enable him to do the allegedly high-handed and improper acts of which she accuses him. The Order of the Court relating to the separation of issues for trial is a provision one. It provides for a trial upon the issue of separability of the Trust because of undue influence and fraud in the inception. Evidence of how the Trust has been managed since it has been created has been specifically excluded from the trial of the issue regarding undue influence and fraud in the inception. The Court has ruled that if plaintiff prevail upon the theory thus being tried, the only need to run into acts of management will be in the accounting. The ruling was that if plaintiff cannot establish a cause of action upon the theory of wrong in the beginning, the Court will still hold open its findings in that regard so that if any evidence received in the course of trying the issue of post execution management and alleged fraud be relevant to the issue which has been termed the First Issue, the Court will not have foreclosed itself from consideration thereof in [3] making its findings. This has brought

and establish a right to voiding the Declaration of Trust and distribution of the assets without accounting. If the evidence be insufficient for that purpose, she still would have a right, under the terms of the Order severing issues for trial, to come to trial to try fraud in the inception during the trial of the issue of mismanagement and fraud on the part of the agent after the Trust was executed. The First Issue has occupied in excess of two days of testimony and argument. It therefore appears that trial of the other referred to issues would also be extensive and that it has been deemed prudent to sever the issues in order to conserve time with its attendant expense to the litigation. It now appears that plaintiff has made out a case on her theory of undue influence in the formation of the arrangement, and the only reason for putting forth the limitations immediately above stated is to explain to any reviewing court that the case has been tried upon a limitation as defined.

The creation of the Trust arises out of many circumstances which include the fact that Mrs. Tidwell and Mr. Richman were the immediate descendants of parents who left considerable wealth. It was only in the occurrence of circumstances which led to the execution of the Declaration of Trust, Lyda Nagel was known as Lyda Blythe Richman Nagel. She was at that time the wife of one Nagel whom

ered him one of the host of fortune hunters w
he [4] continually feared as threats to the inh
ance. She is a woman well educated in Liberal
having been graduated from well respected sch
and holds some academic degrees indicating
vanced education. Her education has been pre
inantly in language and literature. Follo
graduation from the last of the schools which
attended, she was employed for a time by the
of California in one of the Relief Agencies w
existed during the depression years. Her pos
was that of Case Worker and at one time she
a Supervisor of Case Workers. Apparently she
well in that employment. She has taught scho
one of the South American countries where sh
structed children of resident American Natio
Since her return she has delivered public lec
on her observations and experiences in travel.

Although making no claim to being a woma
great physical beauty, Mrs. Tidwell is none-th
a person of considerable personal charm an
traction. It would be expected that if she were
out estate, she would still be appealing as a
pect for matrimony. This is important here be
of defendant's long term insistence that it i
true. Defendant Frederick I. Richman is her
sibling. He is older, much more aggressive, a
successful member of the California State Bar
very considerable learning and ability in the
and handling of property brought him to a po

ested a great deal of pride in the ability and
ss of their son. Throughout her youth, Mrs.
l (first as Lyda Blythe Richman and later
la Blythe Richman Nagel) held a young sis-
onsiderable admiration for the very real and
y recognized [5] accomplishment and senior
ng in the family of her Stanford-trained
brother. She thought of herself as educated
gentle arts and of defendant as a wise, tech-
trained master of practical estate problems.
s actually a man of somewhat testy and dom-
ng disposition, inclined to be critical of his
er sister's habits and friends. While she
up to him, he looked down upon her. The
s, who were in declining years (the father
already suffered a stroke and being under
isability) had need to rely for some guidance
ul and property affairs, and often looked in
o their accomplished son for that guidance.
Tidwell often accompanied her father and
r on errands to a rental property. She some-
even collected some rents but never became,
as trained to become, a manager of income
ty. The culture which had been acquired by
daughter Lyda was in the classical type of
ion. The brother had developed his natural
s to the extent that he was a capable, well
d lawyer, having special acquaintance with
and related matters. He was given to making

less she has recently been remarkably reconstructed that would make her undesirable in the marriage market except to a fortune hunter to whom she would have strong attraction solely because of the substantial nature of her then prospects of inheritance and later realization of those prospects. The evidence indicates that Mr. Richman did believe that his sister would be naturally attractive to fortune hunters and did tend to regard her friends as either casual acquaintances or divorce seekers for her financial bounty. [6] He pointed out and emphasized his view that no one else would be interested in her. He did consider himself (rightly or so) a very well educated and capable lawyer. His accomplishment was continually in plaintiff's mind.

Mrs. Tidwell, during the time that she was married to Nagel and subsequently unto the present time, has been plagued with occasional, but sometimes substantial, legal problems. She did not get along well with her first husband and ultimately divorced him. There was a property settlement in the event of dissolution of that unhappy marital union. She lacked education and schooling in tax matters and her lawyer brother possessed them to a high degree. He acted as her attorney in the liquidation of her marital problem and in the making of her tax returns. The evidence shows that whenever she needed a lawyer, she turned to her brother who was always available, competent and, while a little patronizing toward his sister, efficient in handling her legal

Retirement. They were trustors under a De-
ed of Trust and although the evidence is
on the point, it is uncontradicted that con-
sible saving in expense in the after death set-
t of their affairs was accomplished by the
at said Trust was in existence. There is evi-
that plaintiff at one time told her brother that
so much in the way of property costs and
n had been saved by the parents' Trust, it
be advantageous for the brother and sister
plaintiff and defendant in this action) to have
lar trust. The whole sum of evidence, how-
adds up to the fact that the brother, in early
ained something of a mastery over his sister's
connection with her thoughts concerning her
and [7] that the real suggestion that there
rust between these siblings, of divergent per-
y and objectives, was adroitly suggested by
other. It appears that he always thought of
ate as something to be guarded, built up, and
ally kept intact (although the properties of
it consisted might be sold or exchanged). His
t was to hold the basic fortune and some of
ement together. Her philosophy was that she
woman of means and might as well spend
f it. There is no suggestion in her conduct of
al profligacy, but her brother was, and still
stantly fearful of dissolution of the estate he
en and helped grow. He abhors her plan to

ness. It is true that the mere fact of brother-sister relationship does not in itself create a fiduciary status. It may well be, and in this case was, one of the ingredients in a fact situation leading to the creation of such a relationship. See Johnson v. Clark, 7 Cal. 2d 529, at pp. 534-535:

“Plaintiff and defendant are sisters. The relation between sisters is not presumed to be confidential as is the relation between husband and wife, parent and child, attorney and client, but a confidential relation between sisters may be shown to exist. (Citing cases) Blood relationship is an important factor in determining whether in fact a confidential relationship existed. (Citing case, supra) When it is established as a fact that a confidential [8] relation exists between sisters, the rules governing confidential relations apply, and a presumption of undue influence arises from any transaction by which the person in the superior position gains an advantage over the other. (Citing cases.) Such transactions are constructively fraudulent, and the burden is cast upon the party who has gained the advantage to show fairness and good faith in all respects. Citing cases.)”. (Emphasis in quoted material.)

To similar effect is *Odell vs. Moss*, 130 Cal. 171, where it was said, at p. 356:

“The relationship of brother and sister is not in itself a fiduciary relation, but it is a material

ing observed and heard the brother and sister
ey related their stories, each subjected to
ing cross-examination, and also having in
the testimony of other witnesses who testified
point, the Court finds that a fiduciary rela-
ip existed between brother and sister in the
t situation, from at least the time plaintiff
e of age.

till more definitely defined fiduciary relation-
as existed at all times pertinent to the trans-
s in question because of an attorney and client
nship which began during the domestic
e of plaintiff with her first husband and con-
until shortly before plaintiff brought this
[9]

basic rule is stated in 6 California Jurispru-
2nd 306, where Section 137 says:

* The attorney's relation to his client is both
ary, committing the attorney to the most
ulous good faith, * * *".

s is treated more fully at pages 317-319 of
me work where Section 142 says:

* An attorney at law is not prohibited from
ng into any business transaction with a client,
ng or not touching the subject matter profes-
y entrusted to him by the client. Such trans-
s are, however, subject to a close scrutiny, and
must be shown to be fair in all respects. The
ey must prove that he has given to the client

further by holding that the client is entitled to advice independent from that of the attorney, though also stating that this element alone is not conclusive. The attorney is thus charged with the so-called presumption of undue influence.

“The presumption is based on the fiduciary character of the attorney-client relationship, and on a statutory provision to the effect that all transactions [10] between a trustee and his beneficiary, in which the trustee obtains any advantage, are presumed to be entered into without any consideration and under undue influence. That statute is applicable to the attorney-client relationship. The presumption is to the effect that ‘undue influence’ was used by the attorney in inducing the client to enter into the transaction, and that he did not give sufficient consideration to the client. This does not mean, however, that a total want of consideration is presumed. And, even where the presumption applies, and has not been rebutted, the transaction involved is not void, but merely voidable. A typical example of the application of the presumption of undue influence is the case of a will, drafted for a client by an attorney or under his direction or influence, whereby a disposition is made in favor of the attorney.”

It is of importance to measure the facts of the case against a rule stated in Section 143 of the Restatement, Chapter, at pp. 320-321, as follows:

“* * * The presumption of undue influence is

racts which create the relationship. In negotiating the terms of the attorney's employment, the active client deals [11] with the attorney at length. * * *".

uncontradicted that plaintiff consulted defendant whenever she needed counsel, and there is no doubt but that a general relationship of attorney and client existed at the time critical to the transaction.

It is plain that defendant had ample counsel, and this was entirely proper, possibly necessary. In any event, wise, it is striking that in entering into the arrangement to which defendant now seeks to hold plaintiff for life, the plaintiff relied entirely upon defendant. Under the circumstances defendant created a fiduciary relationship upon two distinct bases (amplified older brother and younger brother and attorney-client), it was the definite duty

of Richman to insist that his sister have independent legal counsel before extending the general relationship of attorney and client into a lifetime commitment of the attorney. This he not only did not do but tended to discourage while paying slight and nominal lip service to the principle.

This leads to a consideration of whether he has discharged his burden. Very definitely he has not. He failed to and did secure an advantage. He obtained a lifetime contract of employment at a rate

would not have been agreed to by one looking
a trustee in an open competitive market.

Some apt language on the general duty of
defendant appears in *Bacon vs. Soule*, 19 Cal.
428, at p. 434:

“The law relating to the subject of confidence
relations has been so often declared and is generally
so well [12] understood that a mere reference to
its underlying principles will suffice for the discus-
sion and decision of the paramount point presented
upon this appeal. A ‘confidential relation’ in law
may be defined to be any relation existing between
parties to a transaction wherein one of the parties
is in duty bound to act with the utmost good faith
for the benefit of the other party. Such a relation
ordinarily arises where confidence is reposed by one
person in the integrity of another, and in such a
relation the party in whom the confidence is re-
posed, if he voluntarily accepts or assumes to accept
the confidence, can take no advantage from his position
relating to the interest of the other party without
the latter’s knowledge or consent. A ‘fiduciar-
ial relation’ in law is ordinarily synonymous with a
‘confidential relation.’ It is also founded upon the
trust or confidence reposed by one person in the integrity
and fidelity of another, and likewise precludes the
idea of profit or advantage resulting from the transac-
tions of the parties and the person in whom
confidence is reposed. (Civ. Code, sec. 2219; [C
cases].)

priest [13] and parishioner, principal and guardian and ward, counsel and client, etc., in each of said relations the party in whom the confidence is reposed must stand in his dealings with the other party unimpeached of the slightest breach of the confidence reposed, and if he derives any advantage from the relation, the law casts upon him the burden of showing that the transaction out of which the advantage arose was fair and just and fully understood and consented to by the party confiding in him. * * *".

See also, Matter of Danford, 157 Cal. 425, at p.

* The relation between attorney and client is a fiduciary relation of the very highest character, which demands the attorney to most conscientious fidelity and integrity. *prima fides.*' (Cox vs. Delmas, 99 Cal. 104, 123, 66 Pac. 836[1].) It is one which precludes the attorney from obtaining any personal advantage by abusing the confidence reposed in him by his client. (Burris, 101 Cal. 624, [36 Pac. 101].) * * *

It is true that Danford charged high fees for services not rendered, but this is so close to charging excessive fees for actual services, than is ordinarily charged for such services, that the same principle is involved here although in a different degree. The relationship was already in existence and related to future services, the exceptions mentioned in Cooley vs. Miller & Lux, 156 Cal. 510, will

“The rule is well established that the relation attorney and client is confidential in character, that any contract entered into between them while that relation continues whereby the attorney obtains an advantage from the client, is presumed to have been made by the client under the undue influence of the attorney. (Kisling vs. Shaw, 33 Cal. 440, [91 Am. Dec. 644]; Civ. Code, sec. 223; Story’s Equity Jurisprudence, secs. 310, 311; Pomeroy’s Equity Jurisprudence, sec. 390.) In the section cited Mr. Pomeroy says: ‘The presumption always arises against the validity of a purchase or sale between the client and attorney made during the existence of the relation. The attorney must overcome that presumption by showing affirmatively, in the most perfect good faith, the absence of undue influence, a fair price, knowledge, intention, and freedom of action by the client, and also, that he has given his client full information and disinterested advice.’ * * * If all these circumstances are proved the contract will stand; if not, it will be defeated or set aside.’ The presumption does not apply to a transaction in which the attorney openly assumes a hostile attitude to his client. (Johnson vs. Dymeyer, 3 DeG & J. 22.) Nor is it applicable to a contract by which the relation is originally created and the compensation of the attorney fixed. The confidential relation does not exist until such a contract is made and in agreeing upon its terms the parties deal at arm’s length. * * *

While an attorney is not prohibited from having business transactions with his client, yet, inasmuch as the relation of attorney and client is one in which the attorney is apt to have very great influence over the client, especially in transactions which are a part of or intimately connected with the client's business in reference to which the relation of attorney and client is always scrutinized with jealous care, and are set aside at the instance of the client, unless the attorney can show by extrinsic evidence that his client acted with full knowledge of all the facts connected with the transaction, and fully understood their effect; and any attempt by the attorney to enforce an agreement on the part of the client growing out of a transaction, the burden of proof is always on the attorney to show that the dealing [16] was fair and just, and that the client was fully advised. (Citing cases.) In the words of Lord Mansfield he must make it manifest that he gave to his client all that reasonable advice against himself which he would have given him against a third person. * *”.

The Declaration of Trust was, and is, voidable; and as the plaintiff has sued to set it aside for the foregoing reasons, the Court holds that she has established her case, and the corpus of the Trust shall be distributed according to the interests of the Trustees. All questions and matters, except that the

ing receivership which will be ordered concurrently with this Memorandum.

Defendant has contended ratification, waiver, operation of the Statute of Limitations, because of certain amendments made to the Declaration and certain consultations between plaintiff and attorneys in New Mexico.

The simple answer to all such questions is that the first legal consultations were had respecting substitution of beneficiaries upon plaintiff's death and did not go at all to the subject herein litigated.

Acts which will amount to undue influence arising from an elaborated brother-sister relationship are ordinarily of long rather than brief accumulation. Undue influence did not occur here in a single act. It grew out of a succession of acts, long continuing attitudes and a sequence of events which covered a long period of time. Conversely, [17] it did not terminate suddenly. Plaintiff was still under undue influence when she first went to Mr. Jones (New Mexico attorney) and her employment of him did not search out the vice in her brother's conduct or in the Declaration of Trust (which was in proper form—for many others but not this case). Plaintiff remained under the spell of undue influence until very shortly before the action was filed. She did not know the extent of advantage her brother had obtained until she asked him to renounce it. It was to her, a still not fully known quantity. She could not ratify what she did

e extent to which she empowered defendant, ff desired there be a trust, the facts compelling that the advantages given her brother in trust indenture, and the rights surrendered by her therein, were not fully explained to understood by her. By reason of defendant's standing attitude toward her, including his decision of her marriageability (except to an ill-fated fortune hunter) she was, at the time she was a trustor, in that condition of subordination to him which is colloquially described as "run down". Although she has now emerged from that state of being dominated, she came out of it just as an anesthetized person slowly returns to full control of conscious action. It cannot be said that she ratified a single one of defendant's acts after she became free from his domination, or that she understood fully the trust instrument which was so advantageous to her right to have funds for less conservative investment, if she so chose, and which gave him absolute control at high fees.

established that the three year period of [18] ion of Section 338, Subsection 4, of the Code il Procedure which provides that the cause “deemed to have accrued until the discovery” s to cases of constructive fraud and undue ce. *Neet vs. Holmes*, 25 Cal. 2d 447; *Sears le*, 27 Cal. 2d 131; *Victor Oil Co. vs. Drum*, l. 226, 239.

covery of the fraud. Hansen vs. Bear Film Company, Inc., 28 Cal. 2d 154.

Rottman vs. Rottman, 55 Cal. App. 624, stating the rule (at p. 632) which the Court need not state here but which answers many of defendant's contentions:

“* * * Another rule stated in the books is that the doctrine of laches is not strictly applied between near relatives * * *”.

See also, Bailey vs. New England Mut. Life Co., 35 Fed. Supp. 1007, at p. 1010:

“* * * Accepting the agreement in the belief the deceased was dealing honestly with her, she justified in resting in that belief, and was called upon then or thereafter to make independent inquiry as to his good faith. * * *”. (Emphasis quoted material.)

and Sibert vs. Shaver, 111 Cal. App. 2d 833; C vs. White, 187 Cal. 489; Feckenscher vs. Gar 12 Cal. 2d 482.

Counsel for plaintiff will prepare Finding of Fact, Conclusions of Law, and Judgment, which shall provide [19] for distribution of the estate and the interests of the parties in the corpus shall be determined by an accounting.

Dated: This 30th day of November, 1953.

/s/ ERNEST A. TOLIN,
U. S. District Judge

of District Court and Cause.]

MINUTES OF THE COURT

: Nov. 30, 1953, at Los Angeles, Calif.
 ent: The Hon. Ernest A. Tolin, District
 Deputy Clerk: Wm. A. White; Reporter:
 Zellner; Counsel for Plaintiff: Wm. P.
 ; Counsel for Defendant: Jos. T. Enright.
 eedings: Court hands counsel copies of its
 andum of Decision, to Counsel. Court ap-
 Roy E. Hallberg as Receiver, fixes bond of
 ceiver in the amount of \$75,000, and orders
 unsel for plaintiff draw formal order of ap-
 ent.

memo of decision.

EDMUND L. SMITH,

Clerk

/s/ By WM. A. WHITE,

Deputy Clerk

[21]

of District Court and Cause.]

ORDER APPOINTING RECEIVER

reas, the undersigned, Judge Presiding in
 ove entitled matter, has this day signed and
 Memorandum of Decision decreeing and or-
 the dissolution and termination of that cer-

erick I. Richman, heretofore commonly known as the "Richman Trust," and referred to herein as the "former Richman Trust," and

Whereas, in the opinion of the court, it is necessary and desirable that a receiver be immediately appointed herein for the purposes of carrying out the decree and judgment of this court and in the best interests of all parties and for the protection and preservation of the assets of said former Richman Trust, and as hereinafter set out.

Now, Therefore, It Is Hereby Ordered that E. Hallberg be, and he is hereby appointed receiver of all the real and personal [22] property constituting the said former Richman Trust; said property includes, among other things, apartment houses, all located within the City of Los Angeles, County of Los Angeles, State of California, commonly known and designated as:

La Loma Apartments, 251 S. Olive, Los Angeles.

Oliver Cromwell Apartments, 418 S. Normandie, Los Angeles.

Canterbury Apartments, 1746 N. Cherokee, Los Angeles.

Fountain Manor Apartments, 5165 Fountain Avenue, Los Angeles.

Western Arms Apartments, 1057 S. Western Avenue, Los Angeles.

That the trust also includes, among other things, accounts receivable and funds in the name of

Lydia Richman, Etc.
& Trust Company of Los Angeles, and else-
and other assets which may hereinafter be
ined or indicated by the court.

Further Ordered that said receiver be, and
empowered and directed to forthwith take
ion of all of the above properties and assets
y other properties or assets which are, or
etermined to be, a part of the said former
an Trust; and said receiver is hereby em-
d and directed to take possession of and to
e and operate said apartment houses and
r and protect the same and all other prop-
belonging to the said former Richman Trust,
out of trust funds the operating expenses
oper and lawful liabilities of said property
rmer trust, or as ordered by the court herein.

Further Ordered that said receiver be, and
ereby empowered and directed, to forthwith
ossession of all books of account, records,
ents, cancelled checks, bank statements, cor-
dence and all files and records pertaining to
d former Richman Trust from the date of
ption to the date hereof and in the possession
er the control of defendant Frederick I.
an, his agents, attorneys or representatives,
e said defendant Frederick I. Richman is
d, and he is ordered, to deliver forthwith all
l records and documents to the said re-

to this court, and in the sum of \$75,000.00, conditioned upon the faithful performance of his duties as such receiver.

It Is Further Ordered that plaintiff Lyda Tidwell and her attorneys and defendants and their attorneys, and all other persons and each of them be enjoined, and they are hereby restrained from disturbing possession of said receiver or in any manner molesting the said receiver of the said property, or interfering directly or indirectly, with administration of the receivership.

It Is Further Ordered that said receiver continue in his duties until the distribution of the assets of the former Richman Trust to the parties as their interests shall appear or until further order of this court.

It Is Further Ordered that the receiver shall not distribute any part of the principal or income of either the plaintiff Lyda Tidwell or defendant Frederick I. Richman without specific order of this court.

It Is Further Ordered that the said receiver conduct and carry on until the further order of the court, the normal business and affairs of the former Richman Trust and all matters incidental thereto or necessary in connection therewith, and that any of the parties hereto, including said receiver, may apply to the court from time to time

and this 30th day of November, 1953.

/s/ ERNEST A. TOLIN,

Judge

[24]

endorsed]: Filed November 30, 1953.

of District Court and Cause.]

BOND OF RECEIVER

All Men By These Presents:

we, Roy E. Hallberg, of Corona Del Mar, California, as Principal, and the Fidelity and Deposit Company of Maryland, a corporation duly organized and authorized to act as Surety under the act of Congress approved August 13, 1894, whose principal office is located in Baltimore, State of Maryland, as Surety, are held and firmly bound unto the United States of America in the sum of Seventy-five thousand and no/100 (\$75,000.00) Dollars, in lawful money of the United States, to be paid to the United States, for which payment, well and lawfully to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Condition of the Above Obligation Is Such, That if Whereas by an order of the United States District Court, for the Southern District of Cali-

ceiver therein, and he was ordered before entering upon the discharge of his duties as such Receiver to [28] execute a bond according to law in said sum of Seventy-five Thousand and no/100 (\$75,000) Dollars;

Now, Therefore, if the said Roy E. Hallberg, as such Receiver, shall faithfully discharge his duties in this action and obey the orders of the Court therein, then this obligation shall be null and void; otherwise to remain in full force and effect.

In Witness Whereof, the said Roy E. Hallberg has hereunto set his hand and seal and the said Company has caused this bond to be signed by its Attorney-in-Fact at Los Angeles, California, this 2nd day of December, 1953.

/s/ ROY E. HALLBERG,
[Seal] FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
/s/ By ROBERT HECHT,
Attorney in Fact

Examined and recommended for approval as provided in Rule 8.

/s/ JOHN WHYTE,
Attorney

Approved this 2nd day of December, 1953.

/s/ ERNEST A. TOLIN,
District Judge

of District Court and Cause.]

PETITION FOR AUTHORITY TO EMPLOY COUNSEL

Honorable Ernest A. Tolin, Judge of the
above entitled Court:

Verified petition of Roy E. Hallberg, respect-
represents and shows as follows:

Petitioner is the duly appointed, qualified, and
Receiver of all the real and personal prop-
constituting the former Richman Trust.

Petitioner represents that it is necessary for
to employ legal counsel on a general retainer
to present him as counsel herein and to advise
concerning his powers, duties, and obligations
Receiver, to assist him in connection with all
matters necessary for the protection, preserva-
management of the assets of the former
an Trust, to assist him in connection with the
ation of petitions or reports to this Court,
ing petitions for instructions to the Receiver
and to act in any and all legal matters that
ise in the course of the administration of the
of said former Richman Trust, when and if
arise. [34]

It may be necessary for counsel to appear in
prosecute or defend suits or proceedings, if
when they arise, and to take all necessary and

4. Petitioner proposes, upon the granting of petition, to employ the firm of FitzPatrick & W and John Whyte as such counsel, and they agreed to accept as compensation for any services rendered to petitioner as counsel such reasonable amount as may be allowed by this Court.

5. Your petitioner is satisfied from the affidavit of John Whyte attached hereto that said attorneys represent no interest adverse to him as Receiver or to any other party hereto, in matters upon which said attorneys are engaged, and that the employment of said attorneys under a general retainer would be for the best interests of the former Richman Trust.

Wherefore, petitioner prays approval of the employment, as an expense of administration hereof of Messrs. FitzPatrick & Whyte and John Whyte as attorneys for petitioner as Receiver of all real and personal property constituting the former Richman Trust.

/s/ ROY E. HALLBERG,
Receiver

State of California,
County of Los Angeles—ss.

John Whyte, being first duly sworn, deposes and says:

1. He is an attorney duly admitted to practice law in the above entitled Court and is a member

the above entitled proceeding and for whose
ment as such attorneys a petition is being
ed and filed by the Receiver herein.

t and the members of his firm have not
l are not employed by or connected with any
parties to the above entitled action or with
er person having any interest adverse to the
r.

/s/ JOHN WHYTE

cribed and sworn to before me this 2nd day
mber, 1953.

/s/ ELEANOR HUMPHREYS,
Notary Public in and for said
County and State [35]

orsed]: Filed December 2, 1953.

of District Court and Cause.]

ORDER AUTHORIZING RECEIVER TO EMPLOY COUNSEL

E. Hallberg, as Receiver of all the real and
l property constituting the former Richman
having filed his verified petition for author-
employ counsel as an expense of administra-
rein, and it appearing for the reasons shown
that it is necessary for the Receiver to

that said counsel represent no interest adverse to the Receiver or to any of the parties in the aforesaid entitled action in the matters upon which the Receiver is to be engaged, and it further appears that the employment of FitzPatrick & Whyte and John Whyte would be in the best interests of the parties hereto, and that this cause is one justifying employment of counsel on a general retainer,

Ordered that the Receiver herein be and he by is authorized and directed to employ FitzPatrick & Whyte and John Whyte of Los Angeles, California, as counsel on a general retainer as an expert in the administration herein to represent him in the matters mentioned in said petition, their compensation [36] for any services rendered to be such reasonable amount as may be allowed by this Court.

/s/ ERNEST A. TOLIN,
Judge

Affidavit of Service by Mail attached.
[Endorsed]: Filed December 2, 1953.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: December 2, 1953, at Los Angeles, California
Present: The Hon. Ernest A. Tolin, District Judge; Deputy Clerk: Wm. A. White; Reporter: Virginia Wright; Counsel for Plaintiff, Wm. T. Camusi; Counsel for Defendant: Joseph T.

Enright moves the Court to hold the status quo, pending the defendants right to a new trial or for a rehearing on the decision. Mr. Enright further moves that be held in status quo during the month of December, relative to tax matters.

Defendant further moves for leave to "Lodge" Notice of Appeal and that Court fix the amount of bonds.

Ordered that defendant is granted leave to file Notice of Appeal.

Further Ordered that hearing to fix amount of bonds is continued to 3:00 p.m. of December 3, 1953.

Filed defendant's Notice of Appeal. Filed Bond for Receiver in the amount of \$75,000. Filed Oath of Receiver, Roy E. Hallberg.

Mr. Nossaman argues motion in opposition to appointment of Receiver, and Attorney for plain-
teffs to said argument.

Ordered that this cause is continued to December 3, 1953 at 10:00 a.m. for further hearing.

At 4:10 p.m.

EDMUND L. SMITH,

Clerk

/s/ By WM. A. WHITE,

MINUTES OF THE COURT

Date: December 4, 1953, at Los Angeles, Ca

Present: The Hon. Ernest A. Tolin, Dis
Judge; Deputy Clerk: Wm. A. White; Repor
Virginia Wright; Counsel for Defendant: Jo
L. Wyatt.

Proceedings: Attorney Wyatt presents to c
form of Notice of Appeal defendant will file t
order of court entered 11/30/53 re: appointmen
Receiver Pendente Lite and requests court to
amount of supersedeas bond on appeal.

The court deems Mr. Wyatt's remarks as fun
argument in support of motion to vacate order
pointing Receiver and enters order denying
motion and further denies the motion to fix am
of supersedeas bond on appeal.

EDMUND L. SMITH,
Clerk

/s/ By WM. A. WHITE,
Deputy Clerk

PETITION FOR AUTHORITY TO PAY CHRISTMAS BONUSES

Honorable Ernest A. Tolin, Judge of the
above entitled Court:

Verified petition of Roy E. Hallberg, by
L. H. Hyde, one of his attorneys, respectfully rep-
resents and shows as follows:

Petitioner is the duly appointed, qualified and
authorized Receiver of all the real and personal prop-
erty constituting the former Richman Trust.

Petitioner represents that in the interest of
maintaining harmony, cooperation and good will on
the part of the employees of the five apartment
houses constituting the major portion of the assets
of the former Richman Trust, it is desirable that
petitioner promptly pay to each of said employees a Christ-
mas bonus. Said five apartment houses are as fol-

1. Cherokeebury Apartment Hotel, 1746 North Chero-
keebury, Hollywood 28, California.

2. Fountain Manor Apartment Hotel, 5165 Foun-
tain Avenue, Los Angeles 26, Calif. [43]

3. Cromwell Apartment Hotel, 418 South
Cromwell, Los Angeles 5, California.

4. Fern Arms Apartment Hotel, 1057 South

About 41 employees are employed in said apartment houses, including a manager for each apartment house, maids, housekeepers, desk clerks, maintenance men.

3. Petitioner proposes to pay Christmas bonuses to said employees in an aggregate amount not to exceed \$600. He proposes to pay a bonus of \$25.00 to \$50.00 to the manager of each said apartment house, the exact amount of each such bonus to be determined by the manager's seniority, value as a manager, and the size of the apartment house. He further proposes to pay bonuses of \$5.00 to \$20.00 to the various maids, housekeepers, desk clerks, and maintenance men, the exact amount of each such bonus to be dependent upon seniority and the quality of their work.

4. Petitioner further represents that Christmas bonuses in approximately the same aggregate amount have been paid to said employees for several years last past.

5. Petitioner is temporarily out of the County of Los Angeles, State of California. This petition is made and executed by and through John W. [redacted] one of his attorneys, at his request.

Wherefore, petitioner prays that the above titled Court make and enter its order authorizing him to pay Christmas bonuses in an aggregate amount not to exceed \$600 to the employees of

amount of each bonus to be fixed in the discretion of your petitioner.

/s/ ROY E. HALLBERG,

Receiver

/s/ By JOHN WHYTE [44]

Verified. [45]

passed]: Filed December 18, 1953.

f District Court and Cause.]

R AUTHORIZING RECEIVER TO PAY CHRISTMAS BONUSES

reading and filing the verified petition of Roy E. Hallberg, Receiver, by John Whyte, one of the attorneys, for authority to pay Christmas bonuses to the employees of the five apartment houses comprising the major portion of the assets of the Richman Trust, the specific amount of each to be fixed in the discretion of said Receiver, and good cause appearing therefor,

Ordered that said Receiver be, and he be authorized to pay Christmas bonuses in an amount not to exceed the sum of \$600.00 to the employees of the five apartment houses comprising the major portion of the assets of the Richman Trust, the specific amount of each to be fixed in the discretion of said Receiver.

/s/ ERNEST A. TOLIN,

Judge

[46]

PETITION FOR AUTHORITY TO RE
VATE INDIVIDUAL APARTMENTS
CATED IN FIVE APARTMENT HOU
INCLUDED AMONG ASSETS OF FO
ER RICHMAN TRUST

To the Honorable Ernest A. Tolin, Judge of
above entitled Court:

The verified petition of Roy E. Hallberg res
fully represents and shows as follows:

1. Petitioner is the duly appointed, qualified
acting Receiver of all the real and personal p
erty constituting the former Richman Trust.

2. The major portion of the assets of the fo
Richman Trust consists of the following five a
ment houses, to wit:

Canterbury Apartment Hotel, 1746 North C
kee, Hollywood 28, Calif.

Fountain Manor Apartment Hotel, 5165 F
tain Avenue, Los Angeles 26, California.

Oliver Cromwell Apartment Hotel, 418 S
Normandie, Los Angeles 5, California. [48]

Western Arms Apartment Hotel, 1057 S
Western Avenue, Los Angeles 6, Calif.

La Loma Apartment Hotel, 251 South Olive
Angeles 13, Calif.

3. Many of the individual apartments locat
each of said apartment houses, and particu

being occupied by a tenant in order to keep tenant from vacating the apartment.

6. Petitioner represents to this Court that repair and renovation of the individual apartments in the manner and to the extent above mentioned [4] is essential to the continued efficient and economical operation of said apartment houses and to the conservation and preservation of the same for the following reasons, among others:

(a) The managers of said apartment houses have complained to petitioner that because of the poor condition of many apartments in their respective buildings, they are having trouble renting the same. At the present time there are approximately four vacancies at the Western Arms, two or three vacancies at the Canterbury, and two or three vacancies at the Fountain Manor. If an apartment is allowed to remain vacant for any extended period of time the resulting loss of income will soon exceed the cost of repair and renovation.

(b) In recent years there has been considerable new apartment house construction; consequently competition for tenants has become keener. Naturally prospective tenants do not want a run-down apartment when a well-kept one of comparable size and location is available at only a slightly higher price.

(c) When apartments become run-down and dilapidated they must be rented at lower prices, they attract a poorer class of tenants which necessarily detracts from

the Canterbury, are located in areas which attract a high class of tenants. These apartments should, if anything, be "up-graded" so as to take advantage of their location rather than allowed to deteriorate.

Poorly kept apartments tend to attract transients instead of the more desirable semi-permanent tenants.

The difficulties encountered in keeping an apartment house filled to capacity are much increased when the house is compelled to cater to a transient trade.

Therefore, petitioner prays that the above mentioned court make and enter its order authorizing the Receiver of all the real and personal property constituting the former Richman Trust, to lease the individual [50] apartments in the five apartment houses above mentioned in the manner hereinbefore specified and at a cost not to exceed \$500 for any one apartment.

/s/ ROY E. HALLBERG,
Receiver

The petition is granted following hearing in court, January 15, 1952.

/s/ ERNEST A. TOLIN,
Judge

[51]

Verified.

[52]

CONSENT TO PETITION FOR AUTHORITY
TO RENOVATE INDIVIDUAL APARTMENT
MENTS INCLUDED AMONG THE ASSETS
SETS OF FORMER RICHMAN TRUST

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

The verified petition of Roy E. Hallberg, requesting consent and authorization to renovate individual apartments in apartment houses included among the assets of the former Richman Trust has been this day duly received by counsel for plaintiffs. After consideration, plaintiff Lyda Tidwell, by and through her counsel, does hereby consent to the granting of said petition upon the grounds and for the reasons set forth in the petition of the said Roy E. Hallberg.

That plaintiff notes this further evidence of the unfortunate conditions which were allowed to develop about and exist in regard to the "management" of said former trust assets by defendant Richman and feels that it is apparently necessary, in accordance with the Receiver's petition, for the protection and preservation of her assets and her half interest in the former Richman Trust that said petition be granted, [53] provided that said Receiver

stified in maintaining or increasing the income;

Shall make a report each month, or as the may direct, listing and covering the cost of improvements or renovations for the past or period; and

That such expenditures shall not be so great as to eliminate the possibility, in the not too distant future, of the regular distribution of some of the income from said former trust assets to the beneficiaries, and as may be determined by the court.

Done at New York, New York, January 8, 1954.

MARTIN, HAHN & CAMUSI

/s/ By WILLIAM P. CAMUSI,

Attorneys for Plaintiff [54]

Acknowledgment of Service attached. [55]

Witness my hand and seal of the Court this 8th day of January, 1954.

 of District Court and Cause.]

MENT FOR REVOCATION AND AVOIDANCE OF TRUST, AND APPOINTMENT OF RECEIVER

The above entitled cause came on for hearing as to the issue which had been severed from others, before the Honorable Ernest A. Tolin, judge presiding without a jury, and plaintiff appearing in

person and by his attorneys, Joseph T. Enright, also Walter L. Nossaman and Joseph L. Wyatt of Brady, Nossaman & Paulston, and the court having determined that a number of issues were involved in plaintiff's Complaint, all of which involved defendant Frederick I. Richman, and some of which involved one or more different other defendants, and the first basic issue being of fraud and undue influence in the execution of the trust executed between plaintiff and defendant Frederick I. Richman, and said issue [79] involving plaintiff's first claim for revocation and avoidance of the trust and the amendments thereto, and said claim pertaining only to plaintiff and said defendant Frederick I. Richman, and said issue has been severed and tried separately in the furtherance of convenience and justice, and defendant Frederick I. Richman having agreed to the severance of said issue for trial, and the court having expressly directed the entry of final judgment herein on plaintiff's claim for revocation and avoidance of said trust and the amendments thereto, upon express determination that no just reason for delay exists in the entry of judgment on said claim, and the court being fully advised in the premises,

Now, Therefore, It Is Ordered, Adjudged and Decreed that the said inter vivos trust dated November 1, 1945, and executed by and between plaintiff Lyda Tidwell and defendant Frederick I. Richman, be and the same is hereby ordered to be

Further Ordered, Adjudged and Decreed the first amendment to said trust, dated August, 1948, and that the second amendment to said trust, dated November 20th, 1950, and each of them and the same are hereby declared to be dissolved, cancelled and revoked, and that the same be of no further force or effect; and

Further Ordered, Adjudged and Decreed that plaintiff is entitled to the ownership and disposition to her, free and clear of said trust and the encumbrances thereto, and each of them, of her interest in the assets which comprised said trust, together with such additional assets, if any, as plaintiff may be adjudged entitled to after an accounting and

Further Ordered, Adjudged and Decreed that a receiver shall be appointed to seize and hold the said assets of the said trust of November 20th, 1950, pending an accounting, [80] and determination of the respective interests of the beneficiaries in the corpus of the Trust and/or pending the disposition of said assets to plaintiff and defendant as their respective interests may appear; and

Further Ordered, Adjudged and Decreed that said receiver shall manage, operate and control the assets of the said trust in such a manner as to preserve and maintain insofar as possible, the status quo of the condition, quality and nature of said

and this court retains jurisdiction of this cause for the purpose of enforcing this judgment and the further orders made herein, as well as for the purpose of making final disposition of other issues pending in this cause; and all questions of the portions in which plaintiff and defendant own the corpus and all questions of accounting are reserved.

It Is Further Ordered, Adjudged and Decreed that plaintiff is entitled to her costs and disbursements incurred in the sum of \$2,364.78.

Dated this 21st day of January, 1954.

/s/ ERNEST A. TOLIN,
Judge

[Endorsed]: Filed Jan. 21, 1954. Entered on docket Jan. 22, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
RECEIVER MUST FILE HIS FIRST
REPORT AND PETITION FOR INSTAL-
MENTS, AND SUPPORTING AFFIDAVIT

Upon reading and filing the affidavit of Robert Whyte attached hereto, and good cause appearing therefor:

It Is Ordered that the time within which Robert Hallberg, as Receiver of all the real and per-

ursuant to the terms of Rule 18(b), Local
o. District, Calif., is hereby extended to and
g March 20, 1954.

: January 29, 1954.

/s/ ERNEST A. TOLIN,

Judge.

[82]

AFFIDAVIT OF JOHN WHYTE

Whyte, being first duly sworn, deposes and
That he is and at all times herein mentioned
y admitted to practice in the above entitled
that he is a partner in the law firm of
rick & Whyte, 756 South Broadway, Los
14, California; and that he is one of the
ys of record for Roy E. Hallberg, as Re-
f all the real and personal property consti-
the former Richman Trust.

r the terms of Rule 18(b) of Local Rules So.
, Calif., said Receiver is required, within
ays after his appointment, to file with the
ntitled Court a report and petition for in-
ns. Said Receiver was appointed on or about
er 30, 1953. Said Receiver is unable to file
ort and petition for instructions within said
of sixty days for the following reasons:

at had expected to be available during vir-
the entire week commencing January 24,
or counsel with the Receiver and his book-

hearing before Judge Peirson Hall of the entitled Court during several full days of said and has accordingly been unable to devote sufficient time to the preparation of said report and petition for instructions.

Affiant has been informed by Mr. Roy Harrison, said Receiver's bookkeeper, that said Harrison had considerable difficulty in assembling the accounting data which must be included in said report notwithstanding the fact that he has been working up the same for a number of days. Said Harrison has further informed your affiant that he was unable to have said accounting data in final form prior to some time early in the week commencing January 31, 1954.

Wherefore, affiant prays that the time within which said Receiver must file said report and petition for instructions be extended to and including February 8, 1954.

/s/ JOHN WHYTE

Subscribed and sworn to before me this 29th day of January, 1954.

[Seal] /s/ JOSEPH L. HERBERT,
Notary Public in and for
County and State.

[Endorsed]: Filed February 1, 1954.

Lyda Tidwell, Etc.
of District Court and Cause.]

CE OF APPLICATION AND MOTION FOR PERMANENT RECEIVER

Frederick I. Richman, Defendant, and to Joseph Enright and Brady, Nossaman & Paulston, Attorneys, and to all known creditors of the Richman Trust, a correct list of the names and addresses of said creditors, who are being given herewith, being attached hereto, marked "Exhibit A" and expressly and by this reference incorporated herein and made an integral part of this

and Each of You Will Please Take Notice that Plaintiff, Lyda Tidwell, will apply to and move the within entitled court, in Department 6 thereof, on the 15th day of February, 1954, at the hour of 10 o'clock a.m., or as soon thereafter as counsel may be heard, for the appointment of a permanent receiver to take charge of and conserve the assets of the former Richman Trust, in such manner and upon such terms and conditions, and with such powers, as the court may determine fitting and

Said application and motion will be made and supported upon the [84] verified Complaint on file in this cause, and upon all of the papers, pleadings, exhibits, documents, minutes and all records on file in this cause, and upon the evidence in the above entitled cause, and upon

and dated November 30, 1953, and upon the findings or proceedings incident to and the Order appointing a Temporary Receiver of said former Richman Trust, duly signed on November 30, 1953, and on the Findings of Fact and Conclusion of Law and the Judgment in favor of plaintiff for the Revocation and Avoidance of the Trust and the appointment of Receiver, all duly signed by the Honorable Court in the above entitled cause on the 10th day of January, 1954, and now in file in said cause, and finally, upon any affidavits as may be filed in the future, in, provided plaintiff deems the same to be necessary or appropriate.

At the time of the hearing and determination of said Motion and Application, plaintiff will request and seek the appointment of Roy E. Hallberg as Permanent Receiver, he having heretofore been designated as Temporary Receiver in the above entitled cause.

Dated: February 4, 1954.

MARTIN, HAHN & CAMUSI,
/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff.

EXHIBIT "A" ON MOTION FOR PERMANENT RECEIVER

List of All Known Creditors of Former Richman Trust, Both Specific and Contingent, at the time of Business on February 2, 1954.

- Farms Co., 103 South Hamel Road, Los Angeles 48, California.
- Specialty Company, 5285 West Pico Boulevard, Los Angeles, California.
- er Bros. Corporation, 818 West 7th Street, Los Angeles, California.
- Byram, Tax Collector, Hall of Justice, Los Angeles 12, California.
- California Refrigeration Maintenance Co., 5905 Broadway Avenue, Los Angeles 38, California.
- de Laundry, 4414 Santa Monica Boulevard, Los Angeles 29, California.
- ied Paint Co., 4459 Sunset Boulevard, Los Angeles 27, California.
- Curtain & Blanket Cleaning Co., 5155 South Broadway Avenue, Los Angeles 37, California.
- mbia Pest Control Co., 101 North Virgil Avenue, Los Angeles 4, California.
- ent Refining & Oil Co., 2460 East Twenty-Seventh Street, Los Angeles 58, California.
- olidated Mattress Co., 6912 Santa Monica Boulevard, Los Angeles 38, California.
- tor of Internal Revenue, Federal Building, Los Angeles 12, California.
- tment of Employment, 1025 P Street, Sacramento 14, California.
- tment of Water & Power, 207 South Broadway, Los Angeles, California.
- t H. Dulley and Co., 3750 West Sixth

Jesse M. Few Electric, 1515 West Seventh S
Los Angeles 17, California.

Frazer Bros. Oil-Burner Company, 1044 S
Western Avenue, Los Angeles 6, California.

Charles R. Hadley Co., 330 No. Los An
Street, Los Angeles, California.

Red Lilly Plumbing, 2316 Hyperion Avenue
Angeles 27, California.

Los Angeles Soap Co., 617 East First Street
Angeles 54, California.

Murphy Bed Sales Company, 8048 West
Street, Los Angeles, California.

Mutual Benefit Life Insurance Company and
correspondent Pacific Mortgage Corp., c/o F
Mortgage Corporation, 210 West Seventh S
Los Angeles 14, California.

A. F. McConnell, 418 South Normandie Av
Los Angeles 5, California. [86]

Walter C. Peterson, City Clerk, License and
Tax Division, Room 1, City Hall, Los Angel
California.

Pacific Telephone and Telegraph Company
South Olive Street, Los Angeles, California.

Paramount Cleaning & Dyeing Service,
West Third Street, Los Angeles 5, California.

Pfeiffer Upholstering Company, 4812 So.
ern Avenue, Los Angeles, California.

Frederick I. Richman, 926 Subway Ter
Building, 417 South Hill Street, Los Angeles,
fornia.

ern California Gas Company, 810 South
Street, Los Angeles, California.

ern Union, 741 South Flower Street, Los
17, California. [87]

avit of Service by Mail attached. [88]

nowledgment of Service attached. [89]

orsed]: Filed Feb. 4, 1954.

f District Court and Cause.]

EMENT OF REASONS AND POINTS
D AUTHORITIES IN SUPPORT OF
PLICATION AND MOTION FOR PER-
NENT RECEIVER

numerous reasons justifying and requiring
pointment of a receiver in accordance with
dings of Fact and Conclusions of Law and
ent, heretofore signed and filed, are so appar-
to not require any detailed statement, since
e all so well known to the court and respec-
ties. The Judgment and Findings are reason
Suffice it to say that the irreconcilable dif-
s between the parties, the nature of the
made and proven as against the defendant
n, and the necessity of protecting and pre-
the estate and interest of plaintiff in the
trust property until the matter may be

An additional reason for the appointment of the present receiver as a permanent receiver is because of his familiarity with the properties and the fact that he has now had sufficient experience to carry out the requirements and problems incident to the management, care and preservation of these [90] properties. Many of the reasons justifying and recommending the appointment of a receiver in accordance with the judgment on the issue already determined are the same as, or akin to, the reasons detailed in the Points and Authorities heretofore served and filed in support of the appointment of a temporary receiver or a receiver pendente lite. Rather than clutter the record with repetitious material, we respectfully refer the court and the parties to the Memoranda of Points and Authorities previously filed in support of our application for a receiver and by this reference incorporate the points and authorities mentioned in said briefs respecting the matter herein, as though set forth here in full.

A receivership is necessary to protect the interests of all parties to a joint venture or partnership pendente lite or after judgment.

Moore vs. Oberg, 61 C. A. (2d) 216

McNeil vs. Graves, 92 C. A. (2d) 371

Armbrust vs. Armbrust, 75 C. A. (2d) 271

A receiver may be appointed to carry out or to protect the integrity of a judgment rendered:

In 75 C. J. Sec. 692, it is stated:

and for the purpose of protecting and
the property so that the decree may be
to the fullest extent of the rights which it
to fix."

accord: Hunt Prod. Co. vs. Burrage, 104 S.
W. (2d) 84; Edwards vs. Edwards, 36 S. W.
1980, 14 Tex. Civ. App. 87; Stockton vs. N. J.
ent. R. Co., 25 Atl. 942, 15 NJEq. 489.

page 1104 of 4 C. J. Sec. it is said:

conservation or preservation of property
an appellate proceeding may be effected
a receiver appointed for that purpose."

accord: McCarthy vs. Kurkjian, 232 Pac.
31, 69 C. A. 682. [91]

is inherent in the Federal Court to pre-
property in controversy by appointment of a

re Reisenberg, 208 U. S. 90, 109; 52 L. Ed.
1903; 28 S. Ct. 219; Ward vs. Central Trust
Co. of Ill., 252 Fed 127.

ctfully submitted,

MARTIN, HAHN & CAMUSI,
By LAURENCE B. MARTIN,
Attorneys for Plaintiff. [92]

nowledgment of Service attached. [93]

orsed]: Filed Feb. 4, 1954.

DEFENDANTS' EXHIBIT C

STIPULATION

Whereas, plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, have arrived at terms of agreement which will result, when completed, in the final settlement and disposition of the above titled matter, and,

Whereas, Lyda Tidwell, plaintiff, under said agreement, is to purchase all of defendant, Frederick I. Richman's share in the assets referred to in this trial as the "Richman Trust", and herein after referred to as the Richman Trust, and Lyda Tidwell already having paid to said Frederick I. Richman the sum of One Hundred Thousand Dollars (\$100,000.00) in pursuance of the terms of the said agreement, and the parties hereto desiring that the Receiver be relieved of his responsibilities in connection with the management, control and possession of the assets of the said Richman Trust with the exception of money in bank and now under the control of the Receiver; [94]

Now, Therefore, It Is Hereby Stipulated between counsel for plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, that the Receiver, Roy E. Hallberg, be relieved of the possession, control and management of the assets of the said Richman Trust, excepting funds in bank and und

possession, control and management of all
ts of the Richman Trust with the exception
ey in bank, as above stated, and that all
nd records now in the possession of the Re-
Roy E. Hallberg, remain in their present
at the Oliver Cromwell Apartments, 418
ormandie, Los Angeles, California, and that
e be not removed therefrom pending final
nt of the above entitled matter, and that the
ake an order for the purpose of carrying
oulation into effect.

: February 26, 1954.

BRADY, NOSSAMAN &

PAULSTON and

JOSEPH T. ENRIGHT,

By JOSEPH T. ENRIGHT,

Attorneys for defendant, Frederick
I. Richman.

MARTIN, HAHN & CAMUSI,

By WILLIAM P. CAMUSI,

Attorneys for plaintiff,

Lyda Tidwell.

[95]

orsed]: Filed Feb. 26, 1954.

f District Court and Cause.]

DEFENDANTS' EXHIBIT D

ORDER

and said plaintiff and defendant are desirous of relieving the Receiver of possession, control and management of the assets formerly designated and referred to as the Richman Trust, with the exception of money in bank and under the control of the Receiver;

Now, Therefore, It Is Hereby Ordered, that the Receiver, Roy E. Hallberg, shall be relieved of his active duties of management, control and possession of the assets known as the Richman Trust, at five o'clock p.m., Sunday, February 28, 1954, and that the said Receiver, Roy E. Hallberg, his agents and employees, and all other agents, servants and employees of the Richman Trust, give over control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, excepting money in bank and under the control of the said Receiver, but [97] including all other said assets of the Richman Trust and the following apartment houses and their contents:

La Loma, located at 251 South Olive Street, Los Angeles, California;

Fountain Manor, located at 5165 Fountain Avenue, Los Angeles, California;

Oliver Cromwell, located at 418 South Normandie Avenue, Los Angeles, California;

Western Arms, located at 1057 South Western Avenue, Los Angeles, California; and

Further Ordered, that plaintiff, Lyda Tidwell, have exclusive possession, control and management of the above described assets, beginning at 5 o'clock p.m., Sunday, February 28, 1954.

Further Ordered, that the books and records pertaining to the Richman Trust and the assets thereof shall be given into the possession and control of plaintiff, Lyda Tidwell, but shall remain in their present location in the Oliver Cromwell Apartments, and neither plaintiff, Lyda Tidwell nor defendant, Frederick I. Richman, nor any other person shall remove the said books and records, or any part thereof, from said location until further order of the court, and all records shall remain in their present location except for legitimate entries and transfers to be made therein in the course of the management of the assets formerly known as the Richman Trust.

Further Ordered, that said books and records shall be made available at all reasonable times to said Receiver, Roy E. Hallberg, for the purpose of preparing his accounting for presentation to the court.

At New York, New York, February 26, 1954.

/s/ ERNEST A. TOLIN,

Judge

[98]

Entered on the docket of the court on February 26, 1954.

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF FEES
ATTORNEYS FOR RECEIVER

To the Honorable Ernest A. Tolin, Judge of
above entitled Court:

Come now Messrs. FitzPatrick & Whyte
John Whyte, as attorneys for Roy E. Hallber
Receiver of all the real and personal property
stituting the former Richman Trust, and for
petition for allowance of fees for legal ser
heretofore necessarily performed by them fo
on behalf of said Receiver from and after N
ber 30, 1953, to and including March 17, 195
spectfully represent and show as follows:

1. Richard FitzPatrick and John Whyte ar
at all times herein mentioned were attorneys
admitted to practice law in the above entitled C
and they are and at all times herein mentioned
engaging as co-partners in the general practi
the law under the firm name of FitzPatri
Whyte, with offices at 756 South Broadway, i
City of Los Angeles, State of California. Ri
FitzPatrick was duly admitted to practice law
courts of the State of California in December
and ever since [100] September 1919, he has
ticed law continuously in this state. John V
was duly admitted to practice law in all cour
the State of California in January 1941, and

practiced law continuously in this state.
petitioners FitzPatrick & Whyte and John
are and ever since December 2, 1953, have
e duly authorized and acting attorneys for
Hallberg, as Receiver of all the real and
l property constituting the former Richman
aid Roy E. Hallberg being sometimes here-
referred to as "the Receiver." In this con-
petitioners allege that on December 2, 1953,
eiver duly petitioned this Court for author-
employ legal counsel to advise him concern-
powers and duties as Receiver, to assist him
ection with all legal matters necessary for
tection, preservation or management of the
f the former Richman Trust, to assist him
ection with the preparation of petitions or
to this Court, and to act generally in any
legal matters that might arise in the course
administration of said assets. On December
by order duly signed and filed, this Court
zed and directed the Receiver to employ
FitzPatrick & Whyte and John Whyte of
geles, California, as legal counsel on a gen-
ainer and as an expense of administration
to represent him in the matters specified in
ve mentioned petition, and the Receiver did
ately employ said counsel.

n anticipation of and pursuant to said em-
nt above referred to in Paragraph 2, peti-

in connection with the conduct and carrying on of the business of the Receiver of the normal business and affairs of the former Richman Trust and matters incident thereto. Petitioners have devoted a total of 91 hours of attorneys' time to the performance of said services as shown on daily time sheets kept by attorneys in the offices of FitzPatrick & Whyte. Of this total of 91 hours of attorneys' time, 88.8 hours are allocable to the services [101] of John W. Whyte and 2.2 hours are allocable to the services of FitzPatrick.

4. The nature of said legal services which have been necessarily so performed by petitioners is likewise shown on said daily time sheets and is as follows:

Nature of Legal Services Performed
Date—1953

November 30—Conference with Hallberg re appointment as Receiver. Study of Judge Tolin's memorandum of decision in the above entitled matter. Conference with Judge Tolin and Hallberg re duties of Receiver and his attorneys.

December 1—Conference with Hallberg and officers of Union Bank & Trust Co. re change of former Trust's bank account to name of Hallberg as Receiver of Assets of Former Richman Trust. Re proper accounting for checks written by plaintiff Tidwell or defendant Richman prior to Hallberg's appointment as Receiver. Whyte accompanied Hallberg on visits to La Loma, Fountain Manor,

administration of former Trust properties, collection of rents, etc.

September 2—Prepared petition and order for appointment of FitzPatrick & Whyte and John as attorneys for Receiver. Conference with regarding his bond as Receiver and making arrangements with Fidelity and Deposit Co. of Maryland for issuance of bond. Telephone call to Camusi (plaintiff's attorneys) for information re developments in appointment of Receiver. Appearance in Judge Tolin's chambers and presentation of Receiver's petition for authority to employ counsel and order employing said counsel—signed and filed. [102]

September 3—Conference at Richman's office with Messrs. Richman, Harrison, Hallberg and regarding assets comprising former Richman Trust property in which trust accounts had been kept. Arrangement with Union Bank & Trust Co. for honor checks drawn by Richman. Advising Receiver re insurance matters and telephone call to Dulley, insurance broker.

September 7—Telephone call from Camusi regarding information on Receiver's activities. Telephone call to Harrison, who had been hired as a reporter by the Receiver, re progress being made in orderly administration of receivership.

September 10—Telephone call to Harrison for report on progress being made in setting up receiver-

December 16—Telephone call from Camusi inquiring about progress of receivership. Telephone call from Mrs. Hallberg re problems incident to opening new bank account with branch of Citizens National Bank & Trust Co. and telephone conference with official of that bank.

December 17—Telephone call from Hallberg re petition for authority to pay Christmas bonuses. Telephone call from Hallberg re petition for authority to renovate individual apartments in various apartment buildings.

December 18—Telephone calls to and from Hallberg to obtain facts necessary for preparation of petition for authority to pay Christmas bonuses. Preparation of said petition. Telephone call from Camusi asking for information concerning progress of receivership. Telephone call from Hallberg re above mentioned petition. Presentation of petition for authority to pay Christmas bonuses and interest thereon to [103] Judge Tolin in chambers—petition signed and filed. Telephone call to Harrison asking him to issue bonus checks. Conference with Hallberg re factual data needed to prepare petition for authority to renovate individual apartments. Telephone call from Harrison re manner of paying Christmas bonuses.

December 21—Telephone call from Hallberg re preparation of petition for authority to renovate individual apartments. Consideration of local rules of Federal District Court re reports and accounts.

tion of petition for authority to renovate
al apartments and other matters.

ber 23—Preparation of petition for author-
renovate individual apartments. Telephone
Hallberg for information needed for said

ber 24—Conference with Hallberg at Oli-
mwell Apartment Hotel re petition for au-
to renovate individual apartments, transfer
insurance policies to a mutual company, Re-
first report to be filed with Court, carrying
Richman's contracts to purchase smog con-
nerator equipment, bookkeeping problems,
er matters.

ber 28—Telephone calls to and from Harri-
installation of smog control incinerator
nt at Canterbury and Oliver Cromwell
nts and re handling of petition for author-
novate individual apartments.

ber 27—Study of files with reference to
ion of smog control incinerator equipment
rbury and Oliver Cromwell apartments and
ation of liability of Receiver to carry out
r's contracts with Air Pollution Control,
r purchase and installation of said [104]
nt.

ber 29—Taking petition for authority to
e individual apartments to Judge Tolin's
s. Telephone call to Harrison re court order

January 4—Conference with Judge Tolson in chambers re contents of first report to be submitted by Receiver, petition for authority to renovate individual apartments, proposed petition for authority to inventory assets, and other matters. Telephone calls from Mrs. Hallberg re these matters. Telephone call to Harrison re problems incident to inventorying all furniture and fixtures in the apartment buildings. Telephone calls to Camusi and Enright (one of defendant's attorneys) requesting them to agree not to require a detailed inventory of every item of furniture and fixtures in the apartment houses—they both stated it was unnecessary.

January 5—Telephone call from Mrs. Hallberg re status of petition for authority to renovate individual apartments and necessity for inventory of furniture and fixtures. Conference with Judge Tolson in chambers re said petition for authority to renovate. Telephone call to Hallberg re forthcoming hearing on petition for authority to renovate and visit of plaintiff's appraisers to apartment buildings.

January 8—Conference with Mrs. Hallberg re inspection of apartment houses being made by plaintiff's appraisers and re inspection of receipt books to be made by plaintiff's accountants. Telephone call to Camusi re these matters. Telephone call from Enright re hearing on petition for authority to renovate individual apartments and

re inspection of books by his accountants
 phone call to Mrs. Hallberg re this subject.
 ry 9—Telephone call from Hallberg re pos-
 sors made by Richman in his accounting for
 operties and possibility of tax refunds as a
 ereof—also re first report to be made by
 , renovation of individual apartments, and
 atters.

ry 11—Telephone call from Hallberg re pos-
 of tax refunds on account of items charged
 man as improvements rather than expenses.
 ry 15—Telephone calls from Lawrence Mar-
 of plaintiff's attorneys) and from Camusi
 rs to be considered at hearing on Receiv-
 tion for authority to renovate individual
 nts. Conference with Hallberg in prepara-
 said hearing. Court appearance re hearing
 petition—petition granted.

ry 19—Preparing draft of Receiver's re-
 lephone call to Harrison re data to be in-
 herein.

ry 25—Instructing and working with Har-
 preparation of schedules to be attached to
 's report. Drafting Receiver's report.

ry 26—Conference with Hallberg re facts
 or preparation of his report. Telephone call
 musi re proposed meeting with Hallberg
 yte to consider prospects for future income
 artment houses.

for alleged violation of California Health Safety Code in connection with operation of incinerator at Oliver Cromwell.

January 28—Conference with Harrison re preparation of accounting [106] data to be incorporated in Receiver's report.

January 29—Telephone call from Harrison re criminal citation in connection with incinerator at Oliver Cromwell. Preparation of ex parte order and affidavit extending time for Receiver to file his report and procuring Judge Tolin's signature thereon. Telephone call from Mrs. Hallberg re efforts made to dismiss above mentioned criminal citation. Telephone call to Mr. Tow in office of Air Pollution Control District re said criminal citation. Telephone conversation with Judge Tolin re Receiver's motion—the Judge decided to modify Rule 18(b) of local Federal District Court rules so as to postpone filing thereof until March 20, 1954, in order that it might cover a full three months period. Telephone call to Harrison re delay in filing above mentioned report—he requested advice re problem of tenant who owed rent and had left clothes in his apartment. Conference with Hallberg re his report. Telephone call to Camusi re delay in filing said report.

February 1—Appearance in Department 33 of Los Angeles Municipal Court re arraignment of Mrs. McConnell, manager of Oliver Cromwell, Inc., being a defendant in the criminal action brought by the City of Los Angeles for alleged violation

ment set over until February 23. Conference with Mr. Tow of Air Pollution Control Dis-said criminal action. Telephone call to Har-ging him to have Air Pollution Control, Inc. immediately with installation of smog con-ipment at Canterbury. Telephone call from allberg re result of court hearing. Dictating Receiver's report and revising same. [107]
 ary 2—Telephone call from Harrison re tax to be filed by Receiver. Examination of de-s moving papers re new trial. Telephone and from Camusi re tax problems and neces-any, for moving for appointment of a per-receiver. Telephone call to Harrison re- names of known creditors to be notified ng on motion for appointment of Hallberg manent receiver. Telephone call from Hall-tax problems. Conference with Judge Tolin bers re appointment of Hallberg as a per-receiver.

ary 3—Telephone call to Camusi re his motion for appointment of Hallberg as a ent receiver. Telephone calls from Harrison ns to be included in list of known creditors. g letter from Enright as to who should peti-distribution of income. Telephone call from allberg re tax problems, removal of part of at Canterbury, and smog control matters. nce with Mrs. Hallberg re such problems as

District re proposed conference with City
ney's office and possible inability of Air Pol
Control, Inc. to perform their contract for in
tion of incinerator equipment at Canterbury.
phone call to Air Pollution Control, Inc., re
ability to install smog control incinerator equi
promptly at Oliver Cromwell and Canterbur
livering list of known creditors to Camusi a
taining from him copy of trust instrument f
in determining who should file 1953 incom
return.

February 4—Telephone call from Harris
additions to list of known creditors and pass
of this information to [108] Camusi. Telephon
from Enright and discussion of smog control
lems, removal of parapet at Oliver Cromwe
other matters. Telephone call from Mrs. Hallb
tax and smog control matters. Letter to Air
tion Control District re progress being made t
installation of incinerator equipment. Tele
call from Harrison re problems of tenant
haven't paid rent, tax information, and other
ters.

February 6—Checking California lien law
cable to apartment houses in order to advise
son what to do with clothing left by guest wi
paid bill at Oliver Cromwell.

February 8—Telephone call to Harrison ad
him what to do about guest with unpaid bill a
ver Cromwell. Revising draft of Receiver's r

Hallberg and Whyte re above mentioned complaint charging violation of California and Safety Code on account of smoke from tor at Oliver Cromwell—complaint dis-

ary 10—Letter to Camusi showing income ense of former Richman Trust for 1953. Receiver's report and petition for fees.

ary 12—Telephone call from Camusi re tax and hearing on motion for appointment of g as a permanent receiver. Telephone call arrison re his discharge by Hallberg.

ary 13—Telephone call to Hallberg and dis- of problems incident to hearing on motion appointment as a permanent receiver, ter- n of Harrison's employment, and necessity aring and filing a schedule of known cred- thin five days after hearing on his appoint- 09] as a permanent receiver.

ary 15—Court appearance re hearing on to make Hallberg a permanent receiver— ion, together with defendant's motions for rial, etc., set over until March 8. Telephone Mrs. Findeisen, the new bookkeeper, not to list of known creditors. Telephone call from allberg re removal of parapet at Oliver ll. Drafting Receiver's report and petition vance of fees.

ary 16—Drafting petition for allowance of

notice of hearing on Receiver's report, his petition for allowance of fees, and petition of his attorneys for allowance of fees.

February 18—Revising draft of Receiver's report.

February 25—Telephone call from Camusi re termination of receivership by settlement of case. Telephone call to Hallberg reporting on this development.

February 26—Attending conference in Judge Lincoln's chambers re settlement of case. Telephone call from Mrs. Hallberg re results of said conference.

February 27—Revising Receiver's report and petition for fees, as well as petition for fees to attorneys for Receiver, as necessitated by Court's order of February 26, relieving Receiver of his duties of active management as of February 28, 1954.

March 1—Conference with Mrs. Hallberg, bookkeeper at Oliver Cromwell re preparatory schedules to be attached to Receiver's report, summary of Receiver's operations for January and February 1954, and re problems connected with turn-over of assets to Mrs. Tidwell. Telephone call to Camusi re problems connected with turn-over of assets [110] to Mrs. Tidwell, payment of bills. Telephone call to Enright re schedule attached to Receiver's report showing creditors and amounts of their claims.

March 2—Dictating and revising statement of services performed by Receiver during January and February 1954, to be incorporated in his report.

over to Mrs. Tidwell, and re Receiver's accounting. Telephone calls to and from Mrs. Hall—documents to be turned over to Camusi. Devising statement of preparation of Receiver's report. Telephone call to Camusi re delivery of title documents to his office.

4—Telephone calls to and from Mrs. Hall—payment of bills, particularly those accruing prior to February 28, 1954, and re turn-over of Receiver's former files. Telephone calls to Camusi re these matters.

5—Telephone call to Mrs. Findeisen re information needed for Receiver's report.

6—Conference with Receiver and Mrs. Hall—re problems incident to Receiver's final accounting and preparation of schedules to be attached to his report.

7—Dictating additional material to be included in Receiver's report.

8—Incorporating additional material in Receiver's report and petition for fee. Telephone call to Camusi re closing of Receiver's books and payment of bills received after March 1, 1954.

9—Conference with Mrs. Hallberg and Mrs. Findeisen, the bookkeeper, at the Oliver Cromwell Hotel—Receiver's final report and preparation and attachment of schedules to [111] be attached thereto.

tion for fee as well as notice of hearing on v petitions and reports of the Receiver and his neys.

March 12—Adding material to Receiver's and telephone call to Mrs. Hallberg for data incorporated therein. Telephone calls from Hallberg re progress being made on schedules attached to Receiver's report.

March 13—Going over draft of his report schedules to be attached thereto with the Re

March 15—Conference with Judge Tolin in bers re petition of Receiver's attorneys for ance of fees. Revising said petition as well ceiver's report and petition for fee.

March 17—Telephone conference with Cam closing of Receiver's books and re the report petitions to be filed by him and his attorneys. Reading final copies of Receiver's report and tion for fee and assembling schedules to tached thereto. Proofreading final copies of tion of Receiver's attorneys for fees. Telephon to Fidelity and Deposit Company of Maryla possible rebate on premium paid for Rec bond.

5. Petitioners desire to call the Court's att to the fact that certain of the legal services inabove referred to are in the nature of extr nary, rather than ordinary, services. Into this gory would fall the services rendered in conn with defending the Receiver and his agents a

the Air Pollution Control District for allocation of sections of the California Health Code on [112] account of smoke issuing from the incinerator at the Oliver Cromwell. By the joint efforts of petitioners and the Revere Air Pollution Control District and the Revere City Attorney's office were persuaded to take this action. This smoke condition resulted in failure to install smog control devices in the incinerators at the Oliver Cromwell and at the Canby, a duty which Frederick I. Richman, the managing agent and a trustee of the former Richman Trust, should have performed during his long administration of the assets of said Trust. Instead, the problem was passed on to the Receiver who was unable to defend a criminal complaint charging violation of law for which he was in no way respon-

sible. Petitioners allege that the reasonable value of ordinary legal services as in Paragraph 4 set forth, exclusive of the extraordinary services hereinabove referred to in Paragraph 5, is the sum of \$3,000. Petitioners do not wish to indicate the sum as representing the reasonable value of extraordinary services but prefer that this Court should determine in its discretion what additional amount should be awarded to petitioners for performance of said extraordinary legal services. With reference to this matter of fixing the rea-

and final report of Receiver and petition for allowance of fee to Receiver filed concurrently herewith.

Wherefore, petitioners pray that this Court grant and enter its order fixing and allowing the sum of \$3,000.00 as a reasonable attorneys' fee to FitzPatrick & Whyte and John Whyte, the attorneys for the Receiver herein, for the ordinary legal services heretofore necessarily performed by them for and on behalf of said Receiver from and after November 30, 1953, to and including March 17, 1954, together with such further sum as this Court may in its discretion determine to be a reasonable attorney's fee for the extraordinary legal services necessarily performed by them for and on behalf of the Receiver during the same period, and that said order authorize and direct the Receiver to pay said sum on or forthwith to FitzPatrick & Whyte from funds on deposit in the Third and Western Branch of [113] Citizens National Trust & Savings Bank, Los Angeles to the account of Roy E. Hallberg, Receiver of the Assets of the former Rio del Norte Trust.

Dated: March 18, 1954.

FITZPATRICK & WHYTE,
JOHN WHYTE

/s/ By JOHN WHYTE,
Petitioners

Duly Verified.

of District Court and Cause.]

AND FINAL REPORT OF RECEIVER D PETITION FOR ALLOWANCE OF E TO RECEIVER

Honorable Ernest A. Tolin, Judge of the
ve Entitled Court:

s now Roy E. Hallberg, as Receiver of all
t and personal property constituting the
Richman Trust (hereinafter sometimes re-
o as "petitioner"), and for his first and final
and his petition for allowance of a fee to
as Receiver for the period commencing De-
1, 1953, to and including February 28, 1954,
ully represents and shows as follows:

November 30, 1953, by order of this Court
igned, docketed and entered, petitioner was
ed Receiver of all the real and personal
y constituting the former Richman Trust.
he terms of said order petitioner was em-
and directed forthwith to take possession
f the properties and assets which are, or
etermined to be, a part of said former Rich-
ust, including all books of account, records
s pertaining to said former Trust in the pos-
or under [116] the control of Frederick I.
n or his agents. Said order also directed pe-
to give a bond in the sum of \$75,000, and

tioned this Court for authority to employ counsel to advise him concerning his powers and duties as Receiver, to assist him in connection with all legal matters necessary for the protection, preservation or management of the assets of the former Richman Trust, to assist him in connection with the preparation of petitions or reports to this Court and to act generally in any and all legal matters that might arise in the course of his administration of said assets. On December 2, 1953, by order signed and filed, this Court authorized and directed petitioner to employ Messrs. FitzPatrick & Vane and John Whyte of Los Angeles, California, as counsel on a general retainer and as an executor of administration herein, to represent him in all matters specified in the above mentioned petition and petitioner did promptly employ said counsel.

3. On or about December 2, 1953, petitioner commenced to take possession of the properties and assets constituting the former Richman Trust. Among the first properties over which he assumed possession and control were the five apartment houses which constitute the principal assets belonging to said former Trust, to wit:

Canterbury Apartment Hotel, 1746 North Hollywood Boulevard, Los Angeles 28, California;

Fountain Manor Apartment Hotel, 5165 Fountain Avenue, Los Angeles 26, California;

Oliver Cromwell Apartment Hotel, 418 Normandie, Los Angeles 5, California;

ma Apartment Hotel, 251 South Olive, Los Angeles 13, California.

On or about December 18, 1953, petitioner had possession of all or [117] substantially all of the real and personal property constituting the former Richman Trust, including the books of account, documents, cancelled checks, bank statements, correspondence and files pertaining to said Trust. Attached hereto as Schedule A and a part hereof is a list of all the known assets and properties which, according to petitioner's best knowledge and belief, constituted a part of the former Richman Trust and over which petitioner had possession, custody and/or control.

On February 26, 1954, by order of this Court entered and filed, petitioner was relieved of his duties of management, control, and possession of the assets of the former Richman Trust as of the 5:00 o'clock p.m. on February 28, 1954, and his agents and employees were directed to turn over possession and control to plaintiff Lyda Tidwell of all said assets, excepting only money in which said assets were held and which was then and under petitioner's control. Pursuant to the terms of said order petitioner has duly surrendered possession and control to plaintiff Lyda Tidwell of all said assets, except for said money in which said assets were held and which is still under his control.

Petitioner's operations with reference to the real and personal properties of the former Richman Trust,

mer Trust and matters incidental thereto, from after December 1, 1953, to and including February 28, 1954, may be summarized as follows:

December 1953

Arranged for the bank account of the former Richman Trust at the Union Bank & Trust Los Angeles to be transferred to an account name of Roy E. Hallberg, as Receiver of the of the Former Richman Trust.

Hired Roy Harrison, a practical accountant formerly employed by Frederick I. Richman, as time bookkeeper at a salary of \$475 per month. Harrison was employed because of his familiarity with the assets and properties of the former Richman Trust, the routine operations incident to their management, and the method of accounting used in connection therewith.

Petitioner and his agents began collecting rents from the five apartment houses owned by the former Trust and deposited the same in the above mentioned bank account. This duty has been continuously and regularly performed over the period of time above mentioned. In this connection petitioner or his agents visited each apartment building at least three times a week and if any rents were in hand they were picked up in order that no substantial amount might be allowed to remain at the building. Furthermore, on the occasion of each such visit vacancies were checked in the particular apartment building.

out December 1953, and January and February 1954.

ved a blanket policy of compensation insurance for all five apartment houses.

first installment of 1954 County taxes.

aged for transfer of the current files of the Richman Trust to a low-rent bachelor apartment at the Oliver Cromwell where petitioner set up his office for administration of the receivership.

ected the various apartment houses and the apartments therein, paying particular attention to the condition of the physical plant, including boilers, refrigeration system, water heaters, and other fixtures, etc.

vised the refurbishing of draperies, arranged for painting and carpeting of one apartment; ordered linens, checked for fire damage, and ordered curtains, all at the Fountain Manor; ordered repair of the refrigerator system, arranged for repairs in several apartments, patched the carpet in one apartment, cleaned chairs, and ordered linoleum at the Western Arms; and arranged for a Christmas tree to be placed in the lobby of each of the five apartment houses.

ugh his counsel, the Receiver petitioned this Court for authority to pay Christmas bonuses to the employees at all five apartment [119] houses, which authority was granted by order of this Court, and which bonus checks were prepared and dis-

rates on renewal of fire insurance policies expiring on the Oliver Cromwell and the La Loma. Subsequently ordered a three year fire insurance policy for the Oliver Cromwell from Liberty Mutual because of a discount of 10% on the standard rate plus a 20-25% dividend at the expiration of the policy.

Inspected poor tile conditions in various individual apartments at the Western Arms and solicited for bids to correct the worst of said conditions.

Established a bank account at the Third Western Branch of the Citizens National Thrift Savings Bank of Los Angeles, this being a convenient place for deposit of rents.

Made plans for revision of the accounting system for the year 1954 in order that full information regarding the operation of each apartment building would be available.

Reviewed contracts with Air Pollution Control, Inc. made by Richman together with other requirements for installation of smog control devices in the generators at the Oliver Cromwell and the Canteen.

January 1954

Supervised repainting of the La Loma lobby.

Through his counsel, the Receiver petitioned the Court for authority to renovate individual apartments in the five apartment houses, which authority was granted by court order.

Accompanied the appraisers designated by

ed bids on painting of individual apart-

ned vacant apartments at Fountain Manor
particular attention to conditions needing re-
habilitation.

red and testified in court re petition for
y to renovate individual apartments. [120]
red with upholsterer.

ed linens and purchased stove at Barker

outed payroll checks.

ed bids for painting at Fountain Manor
Loma.

ased lamps for Oliver Cromwell and pur-
raperies for Western Arms, Oliver Crom-
d Fountain Manor.

vised painting of two apartments at West-
s and two apartments at Fountain Manor.
red with Camusi re method of capitalizing

ted and reinspected painting at Western

ted ceilings at La Loma.

yed area surrounding Western Arms to de-
comparative rents.

red with Whyte (Receiver's attorney) re
's report to this Court.

ased plastic tablecloths for La Loma.

ed bids for power lines at Oliver Cromwell.

conferred with Mr. Tow re criminal citation because of smoke coming from incinerator at Cromwell.

Inspected parapet at Canterbury and discussed with contractor problem of removing part of parapet as required by City of Los Angeles ordinance.

February 1954

Conferred with Air Pollution Control, District 1 re installation of smog control equipment in incinerator at Oliver Cromwell.

Numerous telephone calls to Mr. Tow at Air Pollution Control District re above mentioned criminal citation.

Conferred with Mr. Peckham at Building Department of City of Los Angeles re removal of part of the parapet at the Canterbury; also conferred with contractor re same matter. [121]

Purchased ceiling fixtures at Sears Roebuck.

Conferred with employees of Director of Internal Revenue re tax status of former Richman and assisted bookkeeper in preparation of tax return.

Selected upholstery materials for Western and selected carpeting at Barker Bros.

Arranged for painting at La Loma and inspected the same.

Conferred with Gordon Larson, Director of Air Pollution Control, re dismissal of above mentioned criminal citation.

of complaint charging violation of California
and Safety Code sections by reason of smoke
from incinerator at Oliver Cromwell—com-
missed.

and with Air Pollution Control, Inc. about
installation of smog control incinerator
at Canterbury.

vised painting at Fountain Manor.

ed linens and purchased bath rugs for La

nated employment of Harrison, the book-
and helped him balance his books.

new bookkeeper, Mrs. Jean Findeisen, at
of \$300.00 a month and assisted her in
bookkeeping routine.

igated and prepared claim for workmen's
ation insurance for manager of Oliver
ll and claim for public liability insurance
t at Oliver Cromwell.

eted apartments at Oliver Cromwell for rain
following severe storm.

rred with contractor re parapet removal at
ury and need for caulking at Oliver Crom-
owing heavy rain.

vised major repair of refrigerator equip-
Western Arms, conferred with various re-
ion maintenance men, and selected new con-
give refrigeration service.

ased draperies for Fountain Manor and

Conferred with plumber re repairing water at Fountain Manor.

Prepared and filed fiduciary income tax re

6. Attached hereto as Schedule B and made hereof is a schedule of the receipts and disbursements of the Receiver for the period commencing December 1, 1953, to and including February 28, 1954. Attached hereto as Schedule C and made a part hereof is a schedule of the disbursements by the Receiver as directed by the Court for liabilities incurred prior to February 28, 1954, not paid until after that date. Also attached as Schedule D and made a part hereof is a list of the known creditors of the former Richman Trust with names, addresses, and amounts of claims including both specific and contingent claims, as of the close of business on March 10, 1954.

7. Petitioner desires to make the following further representations to this Court concerning the operation of the assets and properties of the former Richman Trust:

During the three months in which petitioner managed the five apartment buildings constituting the major portion of the assets of the former Richman Trust, his first consideration has been to maintain the occupancy factor high. This has been accomplished to a satisfactory degree. Renovation and improvements have been made in individual apartments only as such apartments became vacant when, in the opinion of petitioner, it became

representations made in the Receiver's petition that individual apartments approved by order of this Court on January 15, 1954. Further, it is noted that the cash position in the receivership has not been too strong.

The cash balance as of December 1, 1953, that became the petitioner assumed his duties as Receiver was \$5,990.30. As of that [123] date a prepayment of \$3,827.66 on a liability insurance policy was made; there were accrued bills from November, 1953, amounting to \$6,943.91; and there were taxes of \$60.97 to pay on December 10, 1953. This tight cash position has continued principally on account of the following substantial liabilities, to wit: Contracts with Air Pollution Control, Inc., for installation of smog control equipment in the incinerators at the Canterbury and Oliver Cromwell in the sum of \$2,658.80; a proposed expenditure of \$3400 for removal of a portion of the parapet at the Canterbury to conform with a new ordinance of the City of Los Angeles; life insurance policies on the Oliver Cromwell at La Loma amounting to \$1,835.46 and \$1,000.00 respectively; and a second installment of property taxes due April 10, 1954, in the sum of \$31. Accordingly, it has been necessary for the Receiver to proceed cautiously with any program of liquidation. In this connection, whereas approxi-

materially in the other apartment buildings the Canterbury there has been no painting the period of the receivership.

Because a great deal of the petitioner's time involved in analyzing and appraising the condition of the five apartment houses, he feels that some of their salient factors as he has observed them should be set out in this report as follows:

Canterbury: The physical condition of this apartment building and its furnishings is the best of the five apartment houses. Largely because of the personal following and the activity of the manager, Mrs. Gregg, there have been relatively few vacancies. The demand for apartments generally is expected to drop off a bit by April 1954, at which time the petitioner had planned to paint approximately 100 individual apartments in this house.

Air Pollution Control, Inc. has just completed the installation of an Oxy-Aire unit in the Canterbury incinerator, which is awaiting approval of the Air Pollution Control District. [124]

During the Spring of 1953, after Mr. R. J. [redacted] had signed a contract for parapet correction, the Los Angeles City Council amended the parapet code. The Los Angeles City Building Code Department of Building and Safety then stated that its standard Sketch A should be used. This necessitated a revised bid which amounted to \$442,000. The petitioner's agent went to the City Hall and talked

ne if the parapet above the entrance court
e allowed to remain. Following the inspec-
bid price was reduced as of February 4,
\$3418. Petitioner has not yet signed a con-
parapet removal because it seems desirable
one this work until after the peak of the
eason has passed.

ain Manor: This building has the weakest
plant of the five apartment houses. More-
is located in a fringe area. The unit heaters
its apartments are non-vented, a source of
l trouble should restrictive legislation be
A large majority of the apartments need
, carpeting and other refurbishing. Even un-
tioner's necessarily limited program of up-
he has deemed it essential to paint over
these apartments and within two days after
relieved of his active duties of management
uary 28, 1954, several apartments were va-
which need renovating.

umbing situation is particularly bad. Elec-
is taking place between some of the copper
nd the cast iron pipes. The copper joints
en used in making some emergency repairs
ks are continually occurring at the joints
he remaining cast iron pipe which is cor-
Due to the fact that the return hot water
e located in the confined area between a
urth floor ceiling and the roof, it is prac-

tioner's rough estimate of the cost of new work to correct that portion of the plumbing system which is presently giving trouble is \$3500. [12]

La Loma: Physically this building is badly worn down. Although the rental rates are low, the Beverly Hills area is developing many vacancies. It has been necessary for petitioner to do some painting in various individual apartments but much more is needed for. It has also been necessary to paint the exterior. Obviously, the relatively low rental rates do not allow for extensive renovation.

Oliver Cromwell: It is interesting to note that although four of the five apartment houses belonging to the former Richman Trust have rental rates which are from 4% to 15% above those of comparable apartment buildings, the Oliver Cromwell, whose rates on an average are lower than those of the nearby apartment buildings, has the best location of the five apartment houses in the former Richman Trust. Accordingly, it seems to petitioner that after renovation the rates at this apartment building should be increased. Had the receivership continued it was petitioner's intention to upgrade various individual apartments if and when vacancies occurred. However, lamps and draperies have been purchased for this building. Some of the furnishings thus replaced were taken to the other buildings.

Air Pollution Control, Inc. has just completed installation of an Oxy-Aire unit in the incinerator which has yet to be approved by the Air Pollution

of this building has never had water-proof-
the caulking around the windows has badly
ted. This should be done as well as a com-
int job on the trim of the building. The
around the window frames is dried up,
and broken out. Glass in many of the win-
loose and needs reputtying. During the
heavy rain storm water entered around the
frames and spoiled some relatively well-
surfaces. Damage was particularly notice-
the east side of the building and upon sur-
came apparent to petitioner that some cor-
work was urgent. Several bids were obtained
ng on an average of about \$650 covering
[126] and caulking and trim on the east
the building only. Of course, the whole
needs this treatment.

the fire insurance policy on the Oliver
l expired January 1, 1954, petitioner placed
policy with Liberty Mutual at an original
10% under standard rates. Furthermore,
Mutual has paid a dividend of at least 25%
re policies since 1908. Fire insurance poli-
the other apartment houses were not can-
espite this potential saving because such
ion would have involved short term rates
period in force or a loss for the property

rn Arms: This building is definitely lo-

Much more painting and refurbishing ought to be done. What lamps were needed were brought from the Oliver Cromwell. Petitioner has been reluctant to spend large sums in this building in view of the questionable desirability of retaining it as one of the assets of the former Richman Trust. In the event that there should be extensive renovation in this building, it is the opinion of petitioner largely because of its location the income derived therefrom would be particularly vulnerable if there be an economic down-trend.

8. With respect to the amount of the fee which should be allowed to petitioner for his services as Receiver herein, petitioner prefers to leave the matter to the judgment and discretion of this Court. In this connection petitioner is informed and believes and therefore alleges that the customary usual fee for property management in the Los Angeles area is 5% of gross income.* Petitioner further alleges [127] that defendant Frederick I. Richman, who administered the assets and property of the former Richman Trust prior to December 1953, received approximately 10% of the gross income as his management fee, plus att

*5% of the gross income figure of \$94,000 shown on Schedule B attached hereto is not equivalent to 5% of gross income during the entire 12 months period of the active receivership, from December 1953, and January and February 1954, for the reason that a representative of petitioner (Widwell) collected cash receipts from some of

special work performed by him as an attorney also respectfully calls the Court's attention to the fact that his duties as Receiver were relatively more burdensome than they have been had the receivership continued for a period of time on a normal well-oiled basis in that heavy duties were imposed upon a Receiver by reason of his taking possession of unknown assets and familiarizing himself with them, the setting up of his books, the installation of his system of management, and then, only a few months later, the necessity for closing up the receivership and surrendering possession of the assets. It should be pointed out that when the Receiver was appointed, he was faced with the task of modernizing and renovating numerous individual apartments which had fallen into a state of obsolescence and required repair under said Richman's administration. The petitioner is further informed and believes and the petitioner alleges that said Frederick I. Richman contracted to manage the assets of the former Trust for so long as both of the beneficiaries thereof, viz., himself and his sister, Mrs. [Name], might live; whereas not only has petitioner's tenure as Receiver herein been in fact limited to a brief three months' period, but it was at the time that the Receiver was appointed that the term of office would be relatively short. For the reasons mentioned above it seems to the

for a three months' period of service in the place of a normal long-term receivership.

9. Petitioner further represents to this Court that his counsel, Messrs. FitzPatrick & Whyte, John Whyte, have rendered necessary and valuable services to him in connection with his administration of the affairs of the former Richman Trust and matters incidental thereto for which he should be adequately compensated, the nature and extent of said services being more particularly set forth in the petition for allowance of fees for attorneys for Receiver, filed concurrently herewith.

Wherefore, Roy E. Hallberg, as Receiver of the real and personal property constituting the former Richman Trust, prays:

1. That his first and final report to this Court as hereinabove set forth, including the schedule attached hereto and made a part hereof, be approved;

2. That this Court make and enter its order fixing and allowing a reasonable fee to the Receiver herein for the services heretofore necessarily rendered and performed by him in carrying on the normal business and affairs of the former Richman Trust and matters incidental thereto from and after December 1, 1953, to and including February 1, 1954, and that said order authorize and direct the immediate payment of said sum so fixed by said order to the Receiver from funds on deposit in the

E. Hallberg, as Receiver of the Assets of
 the former Richman Trust;

that after payment to the Receiver of such
 fee as may be fixed by this Court and
 payment to the attorneys for the Receiver of
 the attorneys' fee to be fixed by this Court,
 the Court make and enter an appropriate order
 vesting the Receiver of all further control over
 the responsibility for all moneys in bank belonging
 to the former Richman Trust and relieving and ex-
 relieving the Receiver from all responsibilities in
 connection with or arising out of the ad-
 ministration of the assets of the former Richman

Trust or such other, further or different relief as
 may be just and proper.

Witness my hand and seal this 18th day of
 March, 1954.

/s/ ROY E. HALLBERG,

Receiver

[129]

SCHEDULE A

Schedule A consists of all known assets and properties con-
 stituting a part of the former Richman Trust
 in which the Receiver assumed possession,
 custody, and/or control.

The Canterbury Apartment Hotel, at 1740
 Cherokee Avenue, Hollywood. Including
 Deed recorded in Book 28420, Page 223. Bill

Schedule A—(Continued)

also covers the Fountain Manor Apartments and the Fountain Manor Garage.

2. The Fountain Manor Apartments, at 418 Normandie, Los Angeles. Including Title Insurance Policy No. 3292694. Deed recorded in Book 20614, Page 28. Title Insurance Policy No. 1736449. Survey of Apartments and Garage Buildings. Unrecorded Release of Hotel Mortgage, dated January 10, 1947, by John Hancock Life Insurance Company. Also cancelled Assignment of Rents. Unrecorded bill of Sale including furniture. Lease covering garage, together with Assignment of Lease of Richman Trust to Green to Herschel E. Watson.

3. La Loma Apartments, at 251 South Olive, Los Angeles. Including Grant Deed recorded in Book 20131, page 213, Bill of Sale. Title Insurance Policy No. 3028784. Grant of Telephone Right-of-Way. Combination of safe. Liberty Mutual Fire Insurance Policy FC-64B 107480.

4. Oliver Cromwell Apartments, at 418 Normandie, Los Angeles. Including Title Insurance Policy No. 3292694. Deed recorded in Book 20614, Page 133. Letter from Pacific Mortgage Corporation, dated September 6, 1950. Bill of Sale. Letter from Mutual Benefit Life Insurance Co., dated October 10, 1950. Combination of safe. Certificate of Insurance, Lloyd's No. 42787—Earthquake Insurance, Certificate of Insurance, Liberty Mutual, No. 64 107389—Fire and Extended Coverage.

Schedule A—(Continued)

Policy No. 1251512-A. Grant Deeds recorded 18405, Page 150; 18405, Page 151; 18405, 18405, Page 150. Unrecorded Release of Chattel Mortgage. Second Bill of Sale.

Howchilla Acres, containing Madera Abstract No. 2666. Security Title Insurance No. 20568. Deeds recorded Dec. 31, 1936, 1937, 1948, October 5, 1949, and March 2, 1950]

Colorado Land Oil Royalty, containing unreleased Deed executed November 24, 1938. San Bernardino County Acres. Including Deeds recorded 1935; February 13, 1937. Telephone Right-of-Way Grant. Letter and Plat from County Surveyor dated December 27, 1944.

San Bernardino Acres. Including Deeds recorded in Book 267, Page 377, and in Book 1187, Page 13, San Bernardino County. Consolidated Title Insurance Policy 82994. Survey.

W. T. Brookshire, Loan, containing Trust Deed and Chattel Mortgage dated December 9, 1946, and December 21, 1946 in Book 1996, Page 215, Records of San Bernardino County, together with a check for \$5,000.00. Pioneer Title Insurance No. 74745. Certificate for one (1) share Crested Butte Mutual Service Company No. 1572CV. Title Assurance Co. Policy No. 837158 for \$9,000.00, expiring July 30, 1956. Four (4) Assign-

12. Associated Gas & Electric Co. containing (5) certificates for fifteen (15) shares Class stock in the name of F. H. Richman, all endorsed with signature guaranteed, all dated in 1931 and 1931.

13. Nevada State Gold Mines Certificate 73382 shares Second Preferred. Certificate 231,047 1/5 shares Common stock, and correspondence.

14. Southwest Oil and Development — Correspondence.

15. Insurance Policies: Associated Industries Corporation—Standard Workmen's Compensation and Employers' Liability Policy No. C 48-091 American Indemnity Company's Comprehensive Liability Policy No. CL 13828.

And—All books of account, records, documents, cancelled checks, bank statements, correspondence and files pertaining to the former Richman estate as more particularly hereinafter set forth:

1. Information Returns.
2. Richman Trust Payroll.
3. Fire Insurance.
4. Withholding Returns.
5. Nagel-Richman Compensation Insurance.
6. Unemployment Correspondence.
7. Social Security.
8. Unemployment Returns.
9. Unemployment Statement of Charges.
10. Nagel-Richman Public Liability Insurance.

Schedule A—(Continued)

Anterbury—Monthly Reports.

Anterbury—Laundry.

Anterbury—Milk.

Anterbury—Telephone.

Anterbury—Paid Bill File—January 1, 1953
to December 31, 1953.

Anterbury—Paid Bill File—January 1, 1954

Anterbury—Rent Receipts.

Anterbury—General.

Colorado Oil Royalty.

Countain Manor—Telephone.

Countain Manor—Laundry.

Countain Manor—Paid Bill File—August 1,
to December 31, 1953.

Countain Manor—Paid Bill File—January 1,

Countain Manor—Transient Correspondence.

Countain Manor—General.

Countain Manor—Rent Receipts.

Countain Manor—Monthly Reports.

La Loma—Rent Receipts.

La Loma—Paid Bill File—July 1, 1953 to
December 31, 1953.

La Loma—Paid Bill File—January 1, 1954 to

La Loma—Monthly Reports.

La Loma—Laundry.

Ladera & Kern County Oil Rights.

Schedule A—(Continued)

39. Oliver Cromwell—General.
40. Oliver Cromwell—Paid Bill File—July to Dec. 31, 1953.
41. Oliver Cromwell—Paid Bill File—Jan 1954 to
42. Oliver Cromwell—Rent Receipts.
43. Oliver Cromwell—Monthly Reports.
44. Oliver Cromwell—Laundry.
45. Nagel-Richman—San Bernadino Acre (includes Orange County Lots and San Cl Lot.)
46. Western Arms—Rent Receipts.
47. Western Arms—Smog.
48. Western Arms—General.
49. Western Arms—Monthly Reports.
50. Western Arms—Laundry.
51. Western Arms—Paid Bill File—Jan 1953 to December 31, 1953.
52. Western Arms—Paid Bill File—Jan 1954 to
53. Richman Trust Workpapers—Jan. 31 to Nov. 30, 1953.
54. Richman Trust Tax Returns for Year 1953.
General Ledger Book to December 31, 1953.
Current Ledger Book.
Cash Receipts and Disbursements Book to

Schedule A—(Continued)

Receipts and Disbursements Book from
1, 1954 to

1 Record Book.

Payroll Terminations Book.

The following records of properties of the
Richman Trust and properties formerly be-
longing to Nagel-Richman:

Carton No. 1: containing the following
tabbed filed:

Old Richman Trust—General.

Old Richman Trust—Burbank Corner.

Old Richman Trust—Linden Court.

Old Richman Trust—Ponce de Leon Apart-
ments. [133]

Old Richman Trust—Surflin.

Old Richman Trust—Tremaine Property.

Nagel-Richman—Insurance.

Nagel-Richman—Plate Glass Insurance.

Rent Control Law.

Correspondence re Rent Control.

Rent Control Petitions.

Rent Control.

Nagel-Richman—Atlantic and Compton
Acres and Lewis Lot.

Nagel-Richman—Beanhouse and Bean & Do-
gville.

Nagel-Richman—Bellhurst Park. Bescondy
and La Canada.

Schedule A—(Continued)

Nagel-Richman—Burbank San Jose.

Casa Loma Court.

Casa Loma Rent Statements.

Casa Loma Court—Paid Bills 3/31/4

Casa Loma Court—Paid Bills April

Nagel-Richman—Chowchilla Acres.

Coronet Apartments.

Coronet Telephone & Telegraph Bill

Coronet Laundry Bills.

Coronet Paid Bills — March, 1943 to
ary, 1944.

Nagel-Richman Culver City Lots.

2. Carton No. 2: containing the fo
tabbed files:

Nagel-Richman El Cajon Ranch.

Fletcher Apartments—Legal.

Fletcher Apartments.

Fletcher Apartments.

Fletcher Apartments.

Fletcher Apartments—Rent Statemen

Five (5) Fletcher Apartments Pa

Files from November, 1941 to C
1950.

Nagel-Richman—Imperial Acres.

Nagel-Richman—Inglewood Building

Nagel-Richman—Jackson Farm.

Jackson Farm.

Nagel-Richman—Jones Farm.

Jones Farm.

Schedule A—(Continued)

R-T Melrose Building.

Modern Machine Works.

Carton No. 3: containing the following
tabbed files:

Ojai Apartments—Three (3) Paid Bill Files
from September, 1941 to May, 1944.

Ojai Apartments.

Nagel-Richman—Olympic Boulevard Lot.

Nagel-Richman—Paden and Pierson Lots.

Nagel-Richman—Portland Acres.

Nagel-Richman—Powers Place.

Nagel-Richman—Sixty Acres.

Nagel-Richman—Spokane Lots.

T—Stolper Electric Financial Statements.

Nagel-Richman—Long Beach Triangle.

Strand Lot.

Villa Carlotta—OPA.

Villa-Carlotta—Laundry bills.

Villa Carlotta—Telephone Bills.

Villa Carlotta—Monthly Reports.

Nagel-Richman—Villa Carlotta.

Villa Carlotta—Four (4) Paid Bill Files
from Nov. 1944 to Mar., 1948.

Carton No. 4: containing the following
tabbed files:

Western Arms Apartments.

Western Arms—Laundry bills. [135]

Woods vs. Richman.

Schedule A—(Continued)

5. Carton No. 5 — containing the following tabbed files:
Fountain Manor—OPA.
Fountain Manor.
Fountain Manor.
Stanley vs. Richman.
Fountain Manor—Laundry Bills.
Fountain Manor—Telephone.
Fountain Manor Apartment Hotel—G
6. Carton No. 6 — containing the following tabbed files:
Fountain Manor Paid Bill Files from January, 1944 to July, 1953.
7. Carton No. 7 — containing the following tabbed files:
Canterbury Apartment Hotel Paid Bill Files from October, 1948 to December, 1952.
8. Carton No. 8 — containing the following tabbed files:
Oliver Cromwell Paid Bills Files from August, 1950 to June 30, 1953.
La Loma Paid Bill Files from May, 1953 to June 30, 1953.
9. Carton No. 9—containing the following:
Check Stubs from January 1, 1946 to September 30, 1953.
10. Carton No. 10—containing the following:
Richman Trust Cancelled Checks and

Schedule A—(Continued)

Carton No. 11—containing the following:

Richman Trust Cancelled Checks—January, 1951 to October, 1953, including Bank Statements.

Transfer Ledger containing Cash Receipts and Disbursements from January, 1941 to December, 1952.

Transfer Ledger containing old General Ledger Account sheets. [136]

Two Stationery Boxes containing Individual Wage Earner Records, and post-office returned W-2 Forms.

Two Stationery Boxes containing Time Sheets for calendar year 1952 and for January, 1953, through December, 1953.

Oliver Cromwell Payment Book, and Pacific Mortgage Company Statements for 1951 and 1952. [137]

<u>Canterbury</u>		<u>Fountain</u>	<u>'La</u>	<u>'Oliver</u>	<u>'Western</u>	<u>'Total</u>	<u>Petty Cash</u>	<u>Imprest</u>
<u>'Manor</u>		<u>'Loma</u>	<u>'Cromwell</u>	<u>'Arms</u>	<u>'Other</u>			

\$ 5,99

\$375.00	\$200.00	\$10.00	\$100.00	\$100.00				\$785.00
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\$ 6,775.30

ceipts

of

\$9,269.97	\$7,153.13	\$2,710.50	\$7,656.28	\$4,975.75	\$ 58.33	\$31,823.96		\$31,823
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						(\$63.44)	
\$9,457.73	\$8,021.02	\$2,677.95	\$7,728.29	\$4,931.00	\$61.11	\$32,813.66	\$32,813.66
8,307.31	6,454.42	2,642.25	7,604.70	4,185.94	321.35	29,515.97	29,515.97
\$27,035.01	\$21,628.57	\$8,030.70	\$22,989.27	\$14,092.69	\$377.35	\$94,153.59	\$100,143.88

the month of February include those only for twenty five days.

	(5.30)	(3.80)	(.92)	(16.35)	(0.45)
d)	\$2,008.99	\$1,971.33	\$712.67	\$1,420.12	\$857.62
	\$2,003.69	\$1,967.53	\$711.75	\$1,403.77	\$857.17
		\$ 95.00	\$171.57	\$ 71.89	\$375.00

\$6,943.91

ng,	(250.96)	(239.49)	(62.49)	(247.48)	
	(5.90)	(1.45)	(68.14)	(126.69)	\$500.25
e	2,781.00	2,437.08	697.57	2,450.23	1,795.44
				(95.67)	2,027.25

ereto)

	4,814.06	4,156.72	1,411.00	4,627.93	2,851.19	33.44
	\$7,338.20	\$6,447.93	\$2,149.51	\$6,902.57	\$4,519.94	\$780.17
						\$2,560.94
						\$30,699.26

Repair & Replace.

6

961.40

572.53

185.87

203.00

WYTHAM T

al Expenses

Electric & Power	\$725.72	\$ 130.59	\$213.26	\$ 30.07	\$206.16	\$145.64
	340.55	49.07	152.94	59.11	26.92	52.51
1	321.82	79.58		73.55	168.69	
r Maintenance	72.03	12.50	5.00	20.42	16.95	17.16
-Oil Burner	289.35	29.85		250.00	9.50	
Main. & Repair	63.44	5.00	8.00	36.48	8.96	5.00
	962.99	273.99	242.04	67.62	241.42	137.92
& Blank.Cleaners	53.97	35.27	9.63	9.07		
ne & Telegraph	572.70	256.28	185.11	8.94	113.54	8.83
Union	27.29	9.15	6.14		12.00	
s	368.86	97.25	112.37	23.62	118.01	17.61
Expenses						
able Exp.for Guests	206.11	153.86			52.25	
ontrol Service	26.00		7.50	4.50	7.50	6.50
s	14.59	14.59				
sing	93.95		47.69			46.26
ery & Supplies	12.50		12.50			
g, Repair & "eplace.						
ng	961.40	572.53	185.87			203.00

ical	9.42	3.78				\$ 5.64
g & Stoves	123.15	27.84	58.53	6.36		30.42
& Bedding	377.58	26.39	335.08			16.11
& Ven. Blinds	103.97	44.21	59.76			
ng	550.16	135.85	149.25	30.67	234.39	
ng	137.04	33.41	5.58		45.78	52.27
ure Repair	21.58			16.68	4.90	
tering	461.78		135.30	78.94	134.79	112.75
discounts	\$6,970.73	\$2,008.99	\$1,971.33	\$712.67	\$1,420.12	\$857.62
	26.82	5.30	3.80	.92	16.35	.42
AS PER SCHEDULE B	\$6,943.91	\$2,003.69	\$1,967.53	\$711.75	\$1,403.77	\$857.17

		<u>Menor</u>		<u>Loma</u>	<u>Cronwell</u>	<u>Arms</u>
<u>al Expenses</u>						
Electric & P.	\$ 477.71	\$ 114.42	\$ 106.96	\$120.31	\$ 62.99	\$ 73.03
l	253.61	32.71	46.72	6.57	107.67	59.94
r Maintenance	402.79	162.66	--	79.58	89.11	71.44
-Oil Burner	121.60	18.55	36.29	6.00	32.03	28.73
Main.& Repair	10.50				5.50	5.00
-Curtail & Blan.	91.72	21.25	28.35	4.15	5.00	32.97
ne & Telegraph	103.37	49.29	37.77	9.78	6.53	
Union	263.04	49.55	57.77	1.50	148.33	5.89
s	14.03	6.67	1.89		5.47	
ash Expend.	246.29	54.79	36.92		37.94	116.64
xpenses	498.79	215.37	87.97	11.57	68.14	92.75
able Ex.-Guests	71.48	30.68			40.80	
ontrol Service	26.00		7.50	4.50	7.50	6.50
r	65.00		45.00		20.00	
upplies	24.06		24.06			
& Wages	6,212.51	1,640.25	1,554.36	320.00	1,610.28	637.62
Bonus	515.00	155.00	75.00	35.00	145.00	80.00
						450.00
						25.00

[illegible]

Revenue	\$ 500.25								\$200.5
Ints	20.93	\$ 5.90	\$ 1.45						
Taxes	\$12,804.85	\$2,524.14	\$2,291.14	\$738.51	\$2,274.64	\$1,668.75	\$780.17	\$2,527.5	
0/53	17,894.41	4,814.06	4,156.79	1,411.00	4,627.93	2,851.19		33.4	
BER, 1953,									
TS AS PER	\$30,699.26	\$7,338.20	\$6,447.93	\$2,149.51	\$6,902.57	\$4,519.94	\$780.17	\$2,560.9	

Address	450.00	224.71	24.06	48.85	61.00	72.95	17.85	450.00
Building	432.04	206.54		112.75			112.75	
Life Insurance						1,835.46		
Ins. Prem.	11.00			10.00	1.00			3,427.60
Comp. Deposit								400.00
Int-Interest								632.99
Principal								1,394.33
Dry Expense-								120.33
Internal Rev.								212.55
Unemploy.								744.55
F.O.A.B.								657.22
of Employ.								
	\$21,377.96	2,695.80	\$3,300.28	\$871.08	\$4,888.57	\$1,592.70	\$439.88	\$7,589.60
ounts	2.33	.62	.61			1.10		
Disburse.								
chedule B	\$21,375.63	\$2,695.80	\$3,299.66	\$870.47	\$4,888.57	\$1,591.60	\$439.886	\$7,589.60
etty cash	Office supplies..	3.55	FM-	46.62	Western A.-	8.66	

Total Expenses

Electric & P.	\$1,261.18	\$ 260.43	\$315.61	\$159.64	\$305.64	\$219.86
	646.98	89.39	207.45	63.47	152.02	134.65
Curry	1,200.35	335.78	306.14	87.87	293.82	176.74
& Tel.	865.86	288.31	294.93	12.71	260.14	9.77
Cash	454.26	136.37	141.34	10.08	50.60	157.04
						\$58.85*
<u>Expense</u>						
General	65.00		45.00		20.00	
Salaries & Wages	5,754.87	1,564.50	1,352.05	320.00	1535.26	533.06
Life Insurance	(115.16)					450.00
Life Insurance	(57.65)					
Life Insurance	(379.45)	(209.58)	(206.68)	(53.62)	(200.10)	(104.78)
Life Insurance	(307.00)					(84.50)
Stationery						15.55
Repairs & Repl.						
Printing	9.00		9.00			
Printing	760.00		425.00	80.00		255.00
Printing	--					
Printing	11.33			11.33		
Printing	116.96		30.68	30.60		55.68
Printing	150.40		12.54		112.78	25.08

Personal Expenses

Gas, Electric & Power	\$1,020.97	\$ 239.68	\$ 294.97	\$270.30	\$216.02
Oil	265.51		204.42	\$ 61.09	
Motor Maintenance	577.10	177.51		73.55	73.55
Generation	71.59	30.79	5.00	11.85	6.00
Telephone	101.54	5.00	61.50	4.00	25.98
Postage	1,156.43	329.46	305.29	88.44	166.93
Laundry & Blank.Clean.	37.60	7.32	2.30	3.51	5.63
Phone & Telegraph	20.84		4.03	11.35	5.46
Union	22.81	19.70	3.11		
Entertainment	299.51	86.13	48.48		72.58
Cash Expenses	406.17	91.18	95.73	18.61	65.08
<u>Expenses</u>					\$ 41.80
Amusement-Guest	188.43	135.33		53.10	
Control Service	26.00		7.50	4.50	6.50
Insurance	65.00		45.00	20.00	
Other	41.23				34.41
Gifts	189.50	52.00	45.50	16.50	29.50
Advertising	33.72		33.72		

	(122.55)	(210.72)	(223.66)	(53.42)	(190.53)	(107.71)	(111.00)
Security	(62.09)						
Tax Withheld	(397.40)						
As' Rent	(315.00)						
As, Repair & Rep.							
Bedding	934.66	114.37	82.15	603.70	134.44		
	375.65	298.50	21.00	56.15			
& Drepes	123.38	34.16		49.17			
	20.00			10.00	10.00		
	277.92	54.56	153.37	35.16	17.50	17.33	
ings	66.93	49.08		17.85			
ring	209.10			18.45	190.65		
	212.94	3.60	68.02	8.00	26.32	107.00	
nk Charge	4.03						4.03
ment-Interest	627.72						\$ 627.
Principal	1,399.53						1,399.
of Int. rev.	482.37						482.
unts	163.90	44.67	46.01	12.36	40.59	20.27	
JUARY, 1954,	\$14,305.98	\$2,638.42	\$3,059.15	\$693.93	\$3,152.04	\$1,637.80	\$2,555.
ENTS AS PER							

DISBURSEMENTS MADE BY THE RECEIVER AS DIRECTED BY THE COURT

COVERING LIABILITIES INCURRED PRIOR TO FEBRUARY 28, 1954,

BUT NOT PAID UNTIL AFTER THAT DATE.

<u>SS</u>	<u>Total</u>	<u>CA</u>	<u>FM</u>	<u>LL</u>	<u>OC</u>	<u>WA</u>
y Co.	\$58.18		\$58.18			
co, LAA.19						
	2.59				\$2.59	
ly Blvd., L.A. 26						
	93.72	\$93.72				
mel Rd., L.A. 48						
Puritas Waters	14.07	14.07				
shington Blvd., L.A.						
	773.27	-	309.38	180.29	211.15	\$72.45
eroa						
geration Co.	78.26	5.00	8.50	31.42	5.00	28.34
se Ave., L.A. 38						
dry	1,023.44	298.36	260.56	66.69	244.97	152.86
Monica, I.A.						
& Blank. Cleaners	75.60	18.22	28.49	9.69	13.18	6.02
estern Ave., L.A.						
& Venetian Blind	7.74		7.74			
anta Monica Blvd., LA						
et Control Co.	26.00	--	7.50	4.50	7.50	6.50
argil, L. A. 4						
ining & Oil Co.	316.83	89.11	--	70.72	78.50	78.50
th, L.A. 58						

, painter	\$75.00	\$75.00		
Western, L.A. 6				
Oil Burner	10.00	\$10.00		
Western, L.A. 6				
Electric	10.98		\$10.98	
roadway, L.A. 12				
any	16.33			\$16.33
3rd, L.A. 48				
v Electric Co.	10.94	10.94		
7th, L.A. 17				
Soap Co.	28.66		\$28.66	
1st, L.A. 54				
Times	11.76	11.76		
1st, L.A.				
Robert	24.54			24.54
Mariposa				
A. F.	11.00		11.00	
ormandie				
Sales Co.	15.50		11.50	4.00
3rd, L.A. 48 - Dis. <u>.31</u>	15.19			
refrigeration	503.98	4.00		499.98
rly Blvd.				
lean. & Dyers	52.89	9.77		43.12
3rd, L.A. 5				
pholstering Co.	338.25	112.75	112.75	112.75

umbing	\$192.16	\$26.39	\$88.63	\$69.07	\$8.07	--
ion, L.A. - Disc. <u>19.21</u>	\$172.95					
bly Co.	24.30		24.30			
ly Blvd. -Disc. <u>.49</u>	23.81					
e Method, Inc.	43.56		36.46			7.10
a Monica Blvd.-Disc. <u>.87</u>	42.69					
th J.	38.70		38.70			
resta Court, L.A.						
lstering Co.	10.15		10.15			
et Blvd.						
Specialty Co.	146.20	18.43	36.18	16.24	28.80	46.55
estern -Disc. <u>2.92</u>	143.28					
on	15.62	3.05	4.54		8.03	
lower, L.A. 17						
pe. & Office Equip.	6.13					
estern						
t'l Bank-Fed. Deposit. Rec.	562.63					
ual Insurance, L.A.	31.83			31.83		
sen- office	103.18					
ter & Power, 207 So. B'way	141.61			141.61		
ephone & Tel. Co.	865.66	331.26	265.57	--	260.95	7.8
live, L. A.						
Gas Co.	321.78	84.68			124.30	112.8
lower, L. A.						
TOTAL	<u>\$6,121.40</u>					

RECAPITULATION: Balance in bank as of February 28, 1954: \$26,819.11

Payments as listed above..... 6,121.40

Balance as of March 10, 1954..... \$20,697.71

WITH NAMES, ADDRESSES, AND AMOUNTS OF CLAIMS, INCLUDING
BOTH SPECIFIC AND CONTINGENT CLAIMS, AS OF MARCH 10, 1954

<u>ss</u>	<u>Nature of Claim</u>	<u>Amount</u>
Control, Inc.	Catalytic unit at Canterbury and	\$1,329.40
Brea, Los Angeles	" at Oliver Cromwell	1,329.40
eration Main. Co.	For dissatisfactory work at	61.10
se Ave., L. A. 38	Western Arms	
Times	Advertising, March 1 to March 5	4.68
st, L. A.	for Fountain Manor	
Tax Collector	2nd installment taxes due April 10	14,858.31
stice, L. A. 12	on the five buildings	
s:		
g tax		262.55
ax- Employees		125.96
ployment Insurance-Employer		332.71
it Life Insurance Co.	Oliver Cromwell Trust Deed	
c Mortgage Corp.	Payable \$2,027.25 monthly -Balance-	165,993.71
th, Los Angeles		
Richman	Management Fee for Nov., 1953 in amount claimed	
Hill, Los Angeles	by F. I. Richman to be 10% of \$31,043.33...	3,104.33
iver and his Attorneys	in amounts to be fixed by the Court.	
phone & Telegraph Co.	House bills from following dates: Canterbury-2/6/54;	
Olive, Los Angeles	Fountain Manor- 2/11/54; and Oliver Cromwell-2/21/54,	
	and Managers' telephone bills.	
f Water & Power	Bills from: Canterbury-2/12/54; Fountain Manor-2/10/54;	
Broadway, L. A.	La Loma-2/25/54; Oliver Cromwell, 2/5/54; and W.Arms-2/10/54	
if. Gas Co.	Bills from: Canterbury-2/12/54; Fountain Manor-2/5/54;	

<u>Case</u>	<u>Nature of Claim</u>	<u>Amount</u>
Sons	For undelivered dining ordered	97.32
chant, Los Angeles	for the Mountain Manor	
Telephone & Telegraph Co.	Listing of the Canterbury, Mountain Manor, and Oliver Brownwell Mt. Hotels	1.25 monthly
Olivo, Los Angeles	in the Classified section of the telephone directory to come out in August, 1954	
e.	For Mountain Manor linen ordered	
Guerra	but not delivered in February	

Disclosed/7: Filed March 18, 1954.

of District Court and Cause.]

CE OF HEARING ON (1) FIRST AND
NAL REPORT OF RECEIVER, (2)
ETITION FOR ALLOWANCE OF FEE
O RECEIVER, AND (3) PETITION FOR
ALLOWANCE OF FEES TO ATTORNEYS
OR RECEIVER

aintiff Lyda Tidwell and Messrs. Martin,
ahn & Camusi, her Attorneys of Record, and
Defendant Frederick I. Richman and Joseph
Enright, Esq., and Messrs. Brady, Nossa-
an & Paulston, his Attorneys of Record, and
all known creditors of the former Richman
ust as of the close of business on March 10,
54.

ce Is Hereby Given that the following mat-
ill come on for hearing on Monday, April
4, at the hour of 10:00 o'clock a.m., or as soon
fter as counsel may be heard, before Honor-
rnest A. Tolin, Judge of the above entitled
in Court Room No. 6 in the United States
House and Post Office Building, Los Angeles,
rnia, to wit:

First and final report of Roy E. Hallberg, as
er of all the real and personal property con-
ng the former Richman Trust, [157] said
.. Hallberg being hereinafter referred to as
receiver."

and reasonable for the services necessarily rendered by him as Receiver during the period commencing December 1, 1953, to and including February 1954.

3. Petition for allowance of fees to FitzPatrick & Whyte and John Whyte, as attorneys for Receiver, in the sum of \$3,000 for ordinary services necessarily performed by them during period commencing November 30, 1953, to and including March 17, 1954, and in such further as said Court may find to be just and reasonable extraordinary legal services necessarily performed by them during the same period.

Dated: March 24, 1954.

FITZPATRICK & WHYTE,
JOHN WHYTE,

/s/ By JOHN WHYTE,

Attorneys for the Receiver

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 24, 1954.

DEFENDANT'S EXHIBIT B

[Title of District Court and Cause.]

DISMISSAL WITH PREJUDICE

Comes now the plaintiff individually and as trustee and as beneficiary under Richman Trust

l this 3rd day of March, 1954.

/s/ LYDA TIDWELL

MARTIN, HAHN & CAMUSI,

By LAURENCE B. MARTIN,

Attorneys for Plaintiff

so ordered except that jurisdiction is re-
over all monies, credits and assets in pos-
or under control of Roy E. Hallberg, re-
heretofore appointed herein, and over said
e and to fix his compensation and allow his
es including fee for his attorney.

h 22, 1954.

/s/ ERNEST A. TOLIN,

Judge

[161]

orsed]: Filed and entered March 25, 1954.

of District Court and Cause.]

CTIONS AND ANSWER TO REPORT
ND PETITIONS OF RECEIVER AND
S ATTORNEY FOR FEES

es Now defendant, Frederick I. Richman,
nself and other interested parties, and in
to the Report and Petition of the Receiver,
. Hallberg, dated March 18, 1954, alleges:

of the five managers managing the apartment houses and gave directions to the Union Bank Trust Company where the funds of the Richman Trust were deposited, commencing November 1953, instead of December 2, 1953, as alleged.

2. Answering that portion of paragraph 4, 3, line 16, alleges that the Receiver has failed to retain possession and control of \$785, or more, which was under his control and dominion, in the form of petty cash in the possession of the five managers of the five apartment houses, and that the Receiver has permitted this money to be surrendered to the plaintiff, Lyda Tidwell.

3. Answering the allegations of paragraph 5, commencing page 3, line 17 to page 8, line 6, admits that the Receiver, usually through others designated as his agents, most, if not all of whom have been compensated for services out of the assets of the estate; did direct the Union Bank to transfer the Richman Trust funds to him; did employ Harrison, who had for many months kept the books of Richman Trust; did collect the rents from the five apartment house managers, which five apartment house managers had for many months collected the rents; did deliver supplies on some occasions to some of the apartments; did continue the policy of insurance, pay County taxes and maintain files. Upon information and belief, defendant contends that the Receiver did inspect the apartment houses on more than two occasions; alleges he did not have agents exercising in their discretion, commencing

ms Apartments, and place Christmas trees
apartment houses; did, through his counsel,
the Court to pay a customary and usual
bonus theretofore paid by the Richman
did terminate fire insurance policies and a
n of many years duration established by
n Trust with the approval of all interested
of Richman Trust, and place in effect mu-
insurance issued by Liberty Mutual Insurance
ny, which may for a particular year result
scount of 10%, but your answering party
med and believes, and upon information and
alleges it would result in a greater cost paid
considered; did, through agents, change the
count from Union Bank to a bank at Third
estern Avenues; did attempt to revise with-
completion an accounting system; did, in De-
review an Order of the Los Angeles County
llution Authority, being a duly constituted
ment agency, and a contract approved by
uthority made by your answering defendant
ir Pollution Control, Inc., and did, in De-
direct his agent to direct the Air Pollution
, Inc., not to perform the contract, resulting
Order of the Government Authority not
performed, and as a direct and proximate
equence of the act of the Receiver, a criminal
eanor complaint was issued by the Clerk of
unicipal Court of the City of Los Angeles,

defendant is informed and believes, and upon information and belief, alleges that the Receiver through agents, supervise some repainting of lobby of the La Loma, accompany appraiser the plaintiff, obtain bids on painting, examine apartments, confer with upholsterers, select linens, distribute payroll checks, purchase supplies, confer with Air Pollution Control's district officers and the criminal complaint citation had been issued, confer with the Building Department of the City of Los Angeles, confer with the Director of Internal Revenue, prepare a claim for workmen's compensation for a manager of the Oliver Cromwell Apartments, fail to be available to render services and thereafter fail to supervise repair of the refrigeration unit at the Western Arms Apartments, appear and testify in support of his petition for authority to renovate individual apartments. Your answering defendant is informed and believes, and upon information and belief, states that the Receiver's testimony was at least very inaccurate, not untrue, as to the number of vacancies and the reasons given for the tenants having then received and vacated certain of the apartments; that he did confer with one or more of the attorneys for the plaintiff as to the method of capitalizing expenses and other matters, but at all times failed and neglected to confer with your answering defendant, although directed by the Court to do so; that he did confer with his attorney in an effort to submit a re-

an Order of this Court extending his time which to file the report.

answering paragraph 6, page 8, line 6, your defendant can not at this time admit or the accuracy of schedules B and C of the for the reason that it will require additional time to audit the incomplete records, files and receipts kept and maintained by the Receiver. Based upon the examination of the records of the Receiver at this time, defendant alleges, upon information and belief, that page 1 of the schedule for Western Arms amount shown as \$4,975.75, is erroneous in that the amount should be \$4,707.40. Also, schedule B, Canterbury receipts [165] shows as \$8,307.31 should be \$9,059.59. Western Arms amount in the sum of \$4,185.94 is erroneous. Also, schedule B, page 3, the details shown under the column Disbursements for December, 1953, Operating Expenses, Maintenance, and Renovation Expense (see Exhibit hereto)" is inaccurate, incomplete and incorrect, at least as of this time of audit. Schedule B, page 4, reflects the sum of \$1,789.29 as being Operating Expense, to which amount should be added the Receiver's contribution, plus \$95.67, \$84.50 and \$100.00 or more, for social security and unemployment insurance when ascertaining presently known expenses of the Receiver, which expenses are normally borne by and paid by apartment house proprietors and managers when receiving compensation of ap-

\$29.43 and \$29.40 and possibly others, and answering defendant is informed and believes, upon information and belief, states that there are no records available to show the reason for the payments. That your answering defendant is informed and believes, and upon information and belief, alleges that the Receiver represented to this Court, before his appointment, that he had for some years engaged in the management of property similar to the property of the Richman Trust, and that his main [167] vocation for some years was in the management of such property, including management under Court Receivership. That defendant is informed and believes, and upon information and belief, alleges that the Receiver did not have such experience; that the Receiver, in fact, had little, if any, knowhow in the management of similar property, or in the rendition of executive and administrative services. Defendant is further informed and believes, and upon information and belief, states that the Receiver misrepresented to this Court his business experience, his educational qualifications, and the amount of time he had available to administer the assets of the Richman Trust.

7. Answering the Petition of Fitzpatrick and John Whyte, dated March 18, 1954, praying for an order allowing them \$3,000.00 as ordinary attorney's fees, and that this Court award an additional amount as and for extraordinary fees, alleges:

A. Defendant is informed and believes, and upon

Legal Services, Ltd. 111
d 91 hours in rendering legal services to the
r, and further alleges that a rate of com-
on in excess of \$30.00 per hour, is excessive
reasonable;

that the attorneys for the Receiver were not
d to render any extraordinary services and,
the services rendered consisted of ordinary
tion upon the duties of a Receiver in quali-
s a Receiver, attempting to prepare a report,
ired by the Court rules, dictating and caus-
e typed a Petition for authority to renovate
ents, and the preparation of theirs and the
r's Petition for their fees, except a problem
ng to the compliance with a Los Angeles
lution Control District Order, and contracts
d by it to be performed. Concerning the ren-
of these services, defendant is informed and
and upon information and belief alleges
that the attorneys either failed to research
as to the duties of Federal Receivers to
with orders of local authorities, or without
research erroneously informed the Receiver
need not comply with the Pollution Dis-
Order. That said attorneys are not entitled
pensation for extraordinary services ren-
an effort to obtain a dismissal of the crim-
mplaint filed against one of the Receiver's
a manager, and your answering defendant,
the circumstances.

Orders of this Court and should be surcharged the following amounts of money:

A. On February 26, 1954, this Court made Order directing the Receiver to surrender possession of the apartment house properties on or before March 1, 1954, and to retain in his possession the monies then collected and under his control and dominion and the monies on deposit in the account opened and maintained by the Receiver. That the Receiver failed and neglected to collect the monies received by some, if not all, of the managers of the five apartment houses during the period February 26, 27 and 28, 1954. That page 10 of the Receiver's report acknowledges this fact and upon the acknowledgment there made, defendant alleges that the Receiver should be surcharged the sum of \$2,000.00.

B. That the Receiver's report, schedule B, page 4, acknowledges that as of February 28, 1954, there were petty cash funds in the amount of \$785.00. That your answering defendant is informed and believes, upon information and belief, alleges that the Receiver permitted this sum of money to remain in the possession of the managers of the five apartment houses and that this sum of money is not in the possession of or under the control of the plaintiff, Lyda Tidwell. That the Receiver should be surcharged with this sum of money, to wit, \$785.00.

C. That your answering defendant is informed and believes, upon information and belief, alleges that the Receiver should be surcharged the sum of \$1,000.00.

dated February 26, 1954, above alleged, and earlier than February 27, 1954, the Receiver did not check in the sum of \$2,027.25, being for payment of interest and a principal installment trust deed note secured by the Oliver Cromwell Apartments, which note was not due or payable until March 1, 1954, and which payment was made by the Receiver contrary to the provisions and requirements of the Order dated February 26, 1954, and the Stipulation upon which it was based. Therefore the Receiver should be surcharged in the sum of \$2,027.25.

That your answering defendant is informed and believes, and upon information and belief, alleges that other funds were expended by the Receiver contrary to his rights and obligations or in violation of the Orders of this Court. That your answering defendant will, upon audit being made of the accounts of the Receiver, specifically allege the amounts, dates, and parties to whom [170] paid, and is now only informed of the issuance of two checks to one Katherine Cosgrove.

That the Receiver, on or about December 31, 1953, failed to pay to your answering party the sum of \$3,104.33 as and for the services of your answering party in accordance with the terms and provisions of the Richman Trust Agreement dated December 1, 1945, although said Receiver has re-

F. Your answering defendant is informed believes, and upon information and belief, all that it would be difficult, if not impossible, for Honorable Ernest A. Tolin, Judge presiding in above entitled action and Receivership, to impartially try the issue involving the reasonableness of the fees to be paid to the Receiver, Roy E. Hallberg, and his attorneys, Fitzpatrick and W. because of the following circumstances:

(a) The representations made by the Receiver concerning his qualifications, experience and knowledge, were made to the Honorable Ernest A. Tolin and it may require said Honorable Ernest A. Tolin to appear as a witness in a proceeding before

(b) That although the Honorable Ernest A. Tolin was only a casual acquaintance of Roy E. Hallberg, he did duly appoint said Roy E. Hallberg, Receiver in [171] this proceeding, and may, because of having appointed the Receiver, be inclined to advocate, or to a degree defend the conduct or actions of the Receiver.

(c) That the Honorable Ernest A. Tolin, died December 2, 1953, acknowledge that before the receipt of evidence at the trial in the above entitled action and before the rendition of his decision November 30, 1953, that he had obtained information from accountants who asserted improper conduct on the part of your answering defendant in complying with discovery orders issued by the Court. Specifically, at page 48, line 5, for example, That there was at no time any pressing concern

on one occasion after your answering de-
had exhausted the discovery process of this
except deposition proceedings, to obtain pos-
or inspection of a file containing correspond-
d between plaintiff and defendant, your an-
defendant did take possession of this file
cause the file to be lodged with this Court
discovering that the plaintiff had control and
n of said file.

That the terms and conditions of the Order
Court, dated February 26, 1954, [172]
t other things, required that the Receiver
n his possession "money in bank and under
trol of said Receiver". That in all other re-
the Receiver was relieved of his then ob-
s, except the duty to collect monies for
o and including 5:00 p.m., February 28, 1954.
ne Receiver was, by virtue of this Court
required to file his accounting in the due
of business and upon his accounting being
and an Order made upon his and his attor-
es, the remainder of the monies in the pos-
of the Receiver were subject to the direc-
f the parties in the above entitled action.
e plaintiff and defendant had, on February
t, entered into an agreement in writing de-
ng their rights to the monies in the posses-
the Receiver. That a true and correct copy
agreement is attached hereto and marked

entitled to receive all monies remaining in the hands of the Receiver, and in the event they can not agree upon their distribution, then each is entitled to apply to a Court of competent jurisdiction to initially and originally determine their respective rights. [173]

Wherefore, your answering defendant prays:

(1) That the Honorable Ernest A. Tolin resign as the presiding Judge of the above entitled Court and assign another Judge of this Court to hear and determine the petitions of the Receiver and his attorneys for fees;

(2) That the petitions and this answer and the answer of any other interested party be set for trial upon the issues created by said pleadings;

(3) That the trial of the issues created by said pleadings be not had until your answering defendant has had an opportunity to avail himself of the discovery processes of this Court to prepare for the hearing upon the Receiver's petition for more than \$4,500 fees and the attorneys' petition for more than \$3,000 fees and for such other and further relief as may be just and proper in the premises.

Dated: April 5, 1954.

BRADY, NOSSAMAN & PAULSON
and JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,

Attorneys for Defendant

EXHIBIT A
(Defendants' Exhibit H)

[Letterhead of Joseph T. Enright]

ce B. Martin, Esq.

Feb. 19, 1954

Hahn & Camusi,

est 6th St. Suite 701

geles 14, California

: Tidwell vs. Richman

ir:

in receipt of your letter of the 16th instant
sh to thank you for the same.

review the matter, the court decision gave
ient what she was offered two and a half
go before suit was filed, namely, a division
trust. The court in the decision avoided any
ion of fraud on the part of Mr. Richman
ur auditing has not produced any fraud.
ore, until such time as the last court has
ed your contention of any fraudulent acts
part of Mr. Richman, you may not expect
cession from Mr. Richman that in any way
tes him with fraud.

intimations that any arrangement Mr. Rich-
ight make that he would not live up to are
preciated. Bear in mind the record in this
full of examples of Mrs. Tidwell changing
nd after agreements have been made, and I
ure you that anything Mr. Richman agrees

actly the precise terms and wording of the release.
I do not think that is at all necessary. Any agreement made contemplates a full release of any and all claims that either Mr. Richman or Mrs. Tiedeman have or think they have against the other from the beginning of the world to the present time. If the matter is going to be terminated, it is my desire to have it terminated completely and not by using trick terminology which might subject it to costly law suits in the future.

I construe the first paragraph on the second page of your letter of February 16th as being a proposition for Mr. Richman to submit a buy or sell proposition. Mr. Richman is not interested in the \$1000.00 figure inasmuch as that was a negotiated figure and you have seen fit to put him in the position of bidding against himself, but now that you have asked for a buy or sell [175] proposition I am authorized to submit the following, and Mrs. Tiedeman will may buy or sell as she sees fit to terminate the matters. The proposition is as follows:

1. Both parties mutually release each other from any and all claims known or unknown, that either have against the other from the beginning of the world to the present time.

2. Both parties shall bear their own expenses.

3. Mutual dismissals with prejudice will be entered in the law suit.

4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954.

sume all operating obligations of the Richman Trust from March 1, 1954 on or until the removal of a receiver as might occur under hereof.

The receiver shall file his report and after the report and/or provision for all of the receiver's debts and expenses and operating obligations of the Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Mary Richman and Mr. Richman.

The Richman Trust shall be terminated and the assets therein and now being controlled by the receiver shall be distributed in equal shares as undivided assets to Mrs. Tidwell and Mr. Richman.

Mrs. Tidwell shall have her election to either purchase Mr. Richman's undivided half interest in the assets of Richman Trust, or to sell her undivided half interest in the assets of Richman Trust for a sum of \$600,000.00, payable on the following terms:

\$100,000.00 cash shall be paid February 26, 1954, by the party buying to the other upon the election by Mrs. Tidwell as to her determination whether she is buying or selling the undivided assets of the assets in Richman Trust. [176]

\$500,000.00 shall be paid through escrow to the party selling on or before May 1, 1954.

In the event the \$500,000.00 is not paid

Tidwell's election shall be forfeited and all hereinabove enumerated, except the forfeiture of the \$100,000.00 and retention of operating income as provided in 4 hereof, shall be of no force and effect, and the parties shall be in the same position as they now are except for the forfeiture of the \$100,000.00 and retention of operating income.

8. Mrs. Tidwell shall notify Mr. Richman of her election on or before February 25, 1954 and deliver to Mr. Richman on or before February 25, 1954, in writing, her unqualified acceptance of the terms herein stated and her election, and on February 26, 1954, the \$100,000.00 above mentioned shall be paid to the party entitled to receive the same.

9. All parties will execute whatever is necessary to carry out the terms of this arrangement.

10. Each party may do whatever he or she deems necessary to protect his or her legal position up to May 1, 1954.

Very truly yours,

/s/ Joseph T. Enright

JTE:MH

The above is acceptable to me and I agree to be bound by the terms thereof.

/s/ Frederick J. Richman

Letterhead of Martin, Hahn & Camusi]

Federick I. Richman
1414 Hill Street, Suite 926
Los Angeles 13, California
In re: Tidwell vs. Richman

Feb. 25, 1954

Sir:

We desire to acknowledge receipt of the letter of February 19th, 1954, sent to us by Mr. Enright, Attorney, and on which your agreement and approval was duly noted.

We hereby advise you that Mrs. Tidwell has accepted and modified the terms and provisions as set forth in the letter of February 19th, 1954, and that she has agreed to purchase all of your right, title and interest in the assets of the Richman Corporation on the terms, provisions and conditions set forth herein, and for the sum and amount therein specified.

In accordance with said letter of February 19th, 1954, and as evidence of good faith in her acceptance, we are transmitting herewith a Cashier's Check in the sum of \$100,000.00, payable to you. In accordance with the terms of your proposal, Mrs. Tidwell does here and now accept, she has agreed to pay the balance as outlined by you. She is prepared to open an escrow so she may complete the transfer of your interest as expeditiously as possible in accordance with the usual custom in such cases, and as buyer, we would prefer to open

proposal in entire good faith, and we are sure
are equally desirous of bringing this entire si
tion to a conclusion as expeditiously as possibl

This letter is addressed to you since that app
to be your desire in the communication of Febr
19th, 1954, and is being delivered to you person
or, in the event you are not at your office, the c
inal will be left at your office. A signed cop
being likewise mailed to you at your office, and
course, a copy thereof is being transmitted to y
attorney, Mr. Joseph T. Enright.

Very truly yours,

Martin, Hahn & Camusi,

/s/ By Laurence B. Martin

LBM:GP

The above acceptance of the proposal of E
erick I. Richman to sell all of his interest in
Richman Trust to me is approved and agreed t
me, and I agree to be bound by the terms of
proposal of February 19th, 1954, and the unq
fied acceptance as contained in the above lett

/s/ Lyda R. Tidwell

P.S.—The Cashier's Check in the amount of \$
000.00 payable to you, is being delivered to you
sonally, or left at your office in the event you
absent therefrom, along with the original of
letter. /s/ L.B.M. [

Duly Verified.

Affidavit of Service by Mail attached

of District Court and Cause.]

OBJECTIONS TO FIRST AND FINAL REPORT OF RECEIVER

Honorable Ernest A. Tolin, Judge of the
above entitled Court:

as Now Plaintiff, Lyda Tidwell, and objects
First and Final Report of the Receiver, for
following reasons:

ough plaintiff does not contest the accuracy
figures listed in said First and Final Report,
after referred to as "Receiver's Report",
f does object to the Receiver's Report inso-
final approval of said report may affect her
to a division of the funds remaining with
ant, Frederick I. Richman, after allowance of
er's and Receiver's attorney's fees:

court order dated February 26, 1954, it was
d, among other things, that:

* the Receiver, Roy E. Hallberg, shall be
l of his active duties of management, con-
l possession of the assets known as the Rich-
rust, as of five o'clock p.m., [181] February
4, and that the said Receiver, Roy E. Hall-
his agents and employees, and all other
servants and employees of the Richman
give over control and possession to Lyda
, plaintiff, of all the assets of the said Rich-

tion of the parties as one of the steps required finally and completely dispose of the within litigation. The agreement for settlement is controlled by an offer letter of defendant, dated February 19, 1954, and by an unqualified acceptance letter of plaintiff, dated February 25, 1954.

The complete offer of defendant, as stated in the offer letter of February 19, 1954, reads as follows:

“* * * The proposition is as follows:

1. Both parties mutually release each other from any and all claims known or unknown, that either party has or may have against the other from the beginning of time to the present time.

2. Both parties shall bear their own expenses.

3. Mutual dismissals with prejudice will be entered in the law suit.

4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the appointment of a receiver as might occur under 7(c) hereof.

5. The receiver shall file his report and after payment and/or provision for all of the received claims and expenses and operating obligations of the Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Richman and Mr. Richman.

6. Richman Trust shall be terminated and the property therein [182] and now being controlled

interests to Mrs. Tidwell and Mr. Richman. Mrs. Tidwell shall have her election to either Mr. Richman's undivided half interest in the of Richman Trust, or to sell her undivided f interest in the assets of Richman Trust for n of \$600,000.00, payable on the following

\$100,000.00 cash shall be paid February 26, y the party buying to the other upon the tion by Mrs. Tidwell as to her determination ther she is buying or selling the undivided t of the assets in Richman Trust.

\$500,000.00 shall be paid through escrow to rty selling on or before May 1, 1954.

In the event the \$500,000.00 is not paid h escrow on or before May 1, 1954, then a r may be re-instated to operate the assets hman Trust and the \$100,000.00 paid upon idwell's election shall be forfeited and all ereinabove enumerated, except the forfeiture \$100,000.00 and retention of operating in- s provided in 4 hereof, shall be of no force ffect, and the parties shall be in the same n as they now are except for the forfeiture \$100,000.00 and retention of operating in-

Mrs. Tidwell shall notify Mr. Richman of her n on or before February 25, 1954 and shall to Mr. Richman on or before February 26,

shall be paid to the party entitled to receive same. [183]

9. All parties will execute whatever is necessary to carry out the terms of this arrangement.

10. Each party may do whatever he or she deems necessary to protect his or her legal position prior to May 1, 1954.

Very truly yours,

/s/ Joseph T. Enright

JTE:MH

The above is acceptable to me and I agree to be bound by the terms thereof.

/s/ Frederick I. Richman"

Plaintiff and defendant have performed all that was on their part to be performed in connection with their settlement of the case, except as hereinafter appears. Plaintiff now has title to all trust properties and defendant Frederick I. Richman has received the sum of \$600,000.00.

Plaintiff and defendant, Frederick I. Richman, are in disagreement as to the meaning of said agreement resulting from the offer letter of February 1954, and its unqualified acceptance by plaintiff, and in further disagreement as to the debits and credits to be made to the fund in the hands of the Receiver. This honorable court cannot dispose of the balance of funds remaining in the hands of the Receiver after making provision for payment

r, until it resolves these questions. The variations in which plaintiff and defendant are in agreement are as follows:

Plaintiff, Lyda Tidwell, was forced to pay real property taxes out of her own funds for the period January 1, 1954 through June 30, 1954, in the sum of \$58.31. Since real property taxes are an ongoing obligation of the trust, and the Receiver has paid said taxes for the months of January and February, 1954, plaintiff claims that she is entitled to reimbursement out of the Receiver's fund in the sum of \$4,952.77.

The receiver made his Final Report without deducting water, gas, [184] telephone and electric bills for a portion of the month of February, in the sum of \$1877.50. Plaintiff has now paid these bills and claims reimbursement from the Receiver's fund in this amount.

The Receiver has not paid the balances due for catalytic units installed in the Canterbury Apartments in the sum of \$10.00 each, or a total sum of \$2,658.80. These units were contracted prior to February 28, 1954, and plaintiff claims reimbursement from the Receiver's fund in the amount of \$2658.80 for the reason above stated.

The Receiver collected \$4,499.29 worth of February 1954 rents in the preceding month of February. Plaintiff claims reimbursement for these

5. The purchase of defendant's interest in Richman Trust by plaintiff was arranged through an escrow established at the Main Office of California Bank, 629 South Spring Street, Los Angeles, California. In said escrow, plaintiff was charged with the sum of \$577.50 for Internal Revenue Stamps placed on the deed of conveyance from defendant, Frederick I. Richman, to plaintiff. Plaintiff was also charged with defendant seller's escheator's fees in the sum of \$329.00 in said escrow. These are charges which should be paid by seller, and plaintiff claims the total sum of \$906.50 from defendant personally. The escrow instructions specifically state the following language:

"These instructions are not intended to amend, not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and with which agreement California Bank is not to be concerned."

6. There may be other operating expenses of Richman Trust to February 28, 1954, which have not been paid by the Receiver, and plaintiff will leave to amend her objections accordingly should such appear to be the case.

Defendant, Frederick I. Richman, also makes certain claims to the Receiver's fund, as follows:

1. Defendant claims that one of the unliquidated operating obligations of the Richman Trust is defendant's agent's fees for the month of November 1953 in the sum of \$2,104.22. If

between plaintiff and defendant is clear. Moneys have been executed, and both parties to any and all claims which they might have against the Trust and against each other. Defendant, Frederick I. Richman, has always "paid" one-half the agent's fee since he was one of the beneficiaries. Plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, both also have claims for net income for the months of November and December, but these were lost to them by virtue of the agreement, and the same is true of defendant's claim for agent's fees.

Defendant also claims that the Receiver erroneously made the March payment on the Oliver Bell loan, in the sum of \$2027.27. However, the report of the Receiver does not so indicate.

Defendant also claims that he is entitled to one-half of moneys collected by certain of the property managers over the week-end of February 27th and 28th. However, portions of these moneys were for January and portions were for March rents. A fair and reasonable interpretation of the agreement of the parties would be to pro-rate all rents between January 1, 1954.

Therefore, plaintiff prays that the First and Final Report of the Receiver be settled and that the court make evidence with respect to an accounting between plaintiff and defendant, Frederick I. Richman, so that the court may be in a position to determine the respective rights of plaintiff and defendant.

made therefrom to the Receiver and his attorney
for services rendered by them.

MARTIN, HAHN & CAMUSI
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell

[Endorsed]: Filed April 7, 1954.

[Title of District Court and Cause.]

PLAINTIFF'S REPLY TO OBJECTIONS
DEFENDANT FREDERICK I. RICHMAN

Comes now Plaintiff, Lyda Tidwell, and in reply to
to Objections of Defendant, Frederick I. Richman, dated
dated April 5, 1954, alleges as follows:

1. The Receiver was not to retain possession
and/or control of, \$785.00 or more in petty cash.
That the order of court dated February 26, 1954,
ordered that the Receiver was only to retain possession
session of money in bank. Furthermore, said petty
cash constituted a part of the assets of the Richman
Trust which were purchased by Plaintiff Tidwell
and which belong to her solely, all in accordance
with the agreement of the parties set forth by the
of the Objections of Plaintiff and Defendant Richman
man herein.

2. Plaintiff denies that it would be difficult
and/or impossible for the Honorable Ernest C. Tolin
Tolin to try the issue involving reasonableness of
expenses incurred by the Receiver.

at this Honorable Court is the only court
has jurisdiction to try the issue of the rea-
ness of the Receiver's fee and the fee of the
y for the Receiver. And further, this Honor-
urt is the only court which has jurisdiction
he issue of Plaintiff's and Defendant Rich-
ights to the fund remaining in the hands of
Receiver and the disposal of said fund.

With respect to other credits to which Defend-
hman claims he is entitled from the Receiver
the fund in the Receiver's possession, plain-
already stated her position in her Objec-
eviously filed, and reference is hereby made
objections as though set forth herein in full.
ne Receiver is entitled to a reasonable fee
services and the attorney for the Receiver is
to a reasonable fee for legal services ren-
he Receiver in this matter.

efore, Plaintiff prays that the Final Report
count and Petitions of the Receiver and his
ys be settled after hearing and that this
ake evidence and declare the rights of Plain-
Defendant Richman to funds remaining in
ds of the Receiver, and order disposition of
nd in accordance therewith.

l this 8th day of April, 1954.

MARTIN, HAHN & CAMUSI,

/s/ By WILLIAM P. CAMUSI,

Attorneys for Plaintiff,

PLAINTIFF LYDA TIDWELL'S POINTS AND
AUTHORITIES IN SUPPORT OF HER
OBJECTIONS AND HER REPLY TO
DEFENDANT RICHMAN'S OBJECTIONS

Court has jurisdiction to settle accounts, decide the
rights of Plaintiff and Defendant Richman as to the
fund remaining in Receiver's hands and to make an
order disposition in accordance therewith.

Defendant Richman claims on Page 11 of his
Objections to the Receiver's Report that he and
Plaintiff Lyda Tidwell are entitled to apply to this
Court of competent jurisdiction to initially and
originally determine their respective rights to the
funds remaining in the hands of the Receiver.

This proposition is incorrect. This Court has no
jurisdiction of the fund and jurisdiction to decide who
persons are entitled to distribution of the fund
and in what amounts.

In *Pacific Bank vs. Madera Fruit, Etc. Co.*, 100
Cal. 525, plaintiff dismissed suit after a Receiver
had been appointed and after the receiver had taken
possession of certain assets. Thereafter the receiver
filed his account and petition and asked the court
to "settle the same, fix his compensation, et cetera."
Plaintiff then filed a motion to dismiss the receiver's
account and petition on the ground that the court
had lost jurisdiction. However, the motion was denied
and this ruling was affirmed on appeal.

tain jurisdiction to settle the receiver's account it also retains jurisdiction to dispose of funds in the receiver's possession, saying, the

“is still amendable to the court as its officer has complied with its directions as to the disposal of the funds which he has received during the course of his receivership.”

Pacific Bank case also states, at P. 527,

“If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, nor make any disposition of the funds in his hands, how would the same be settled or the funds disposed of? The money on hand and collected by the receiver is in violation of law in the hands of the court to be disposed of as the law directs.” (Emphasis ours.)

The court in which the receiver was appointed has, after the dismissal of the case, settle and audit the accounts of the receiver, to what jurisdiction will he resort? The dismissal of the case is the end of it as between the parties, but the court still retained the power to settle and audit the accounts of its receiver and to direct the disposition of the funds in his hands.” (P. 527) (Emphasis ours.)

It is clear that the receiver is holding funds for

stated, quoting from Beach on Receivers, sec. 100, ¶ 1000: "Though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, his holding is not merely for the benefit of that party, or of any other party; it is the holding of the court for the equal benefit of all persons interested in the property may be finally adjudged by the court to have received in it;"' (Emphasis ours.)

In State vs. Gibson, 21 Ark. 140, the court, after referring to jurisdiction over a receiver after dismissal of the case, said,

"He was an officer of the court and subject to its orders in relation to the partnership effects placed in his hands as receiver until discharged by the court."

To same effect, see Ireland vs. Nichols, 40 Ill. 100, 101; Pr. 85; Whiteside vs. Pendergast, 2 Barb. Ch. 200.

Respectfully submitted,

MARTIN, HAHN & CAMUSI
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 12, 1954.

f District Court and Cause.]

MINUTES OF THE COURT

April 12, 1954, at Los Angeles, Calif.

nt: Hon. Ernest A. Tolin, District Judge;
Clerk: Wm. A. White; Reporter: Virginia
; Counsel for Plaintiff: Wm. P. Camusi;
for Defendants: Joseph Enright; Counsel
eiver: John G. Whyte.

edings: For hearing on (1) first and final
of Receiver; (2) petition for allowance of
Receiver; and (3) petition for allowance of
attorney for Receiver.

y makes a statement that no evidence will be
concerning the appointment of the Receiver
action.

t makes a further statement that if it orders
t on its own motion, the charge will be made
the Receiver, but if one of the litigants
ges the Receiver's report and requests an
he charge for the same will be made against
llenging party.

ney for defendant states he will take the
ons of the Receiver and his attorney, after
ne moves the Court to set the matter down
l as to the issues of the payment of fees to
ceiver and his attorney.

Ordered that issues of payment to Receiver

payment of his fees and his attorney's, is set for pretrial hearing May 14, 1954, 10 a.m.

Counsel for both sides to file briefs re divisions of monies on, or before 5 p.m., May 9, 1954.

EDMUND L. SMITH,
Clerk

/s/ By WM. A. WHITE,
Deputy Clerk

[Title of District Court and Cause.]

PETITION TO DISQUALIFY AND REVOKE THE CREDENTIALS OF AUTHORITIES

To the Honorable Ernest A. Tolin, Judge of the
above entitled court:

The Petition of Frederick I. Richman, defendant herein, respectfully represents that the only remaining issue to be determined by this Court in this case is the accounting and fixation of fees for the services of the receiver and his attorney. That there are now pending Petitions by the receiver and his attorney to have their fees fixed. That defendant has filed objections to these Petitions, in which defendant has alleged that the receiver misrepresented his experience, qualifications, and the time he had available to act as receiver, which misrepresentations resulted in this Court appointing the receiver. That reference to these allegations are

of the receiver Roy E. Hallberg and his to make a full and free disclosure of the pertaining to his experience, qualifications, and the he had available to act as receiver [195] apartment houses containing in excess of apartments situate in the City of Los Angeles, requiring the attention of a person experienced in management and operation of said apartment houses and the full time of such a person, he free of unclean hands, and this Court sitting in court of equity when determining the amount of compensation to be paid said receiver, should rely on the evidence upon the question as to whether or not the receiver Roy E. Hallberg is free of unclean hands in making said representations and concealing his lack of time and experience. That the Honorable Ernest A. Tolin is a competent witness to the determination of what fees should be paid Roy E. Hallberg for his services as receiver, in that Roy E. Hallberg made the following representations to the Honorable Ernest A. Tolin before his appointment as receiver, and at a time when the Honorable Ernest A. Tolin was instructing him to ascertain his availability, experience and qualifications to act as receiver of said apartment houses and any other assets of the Richman Trust, which Trust assets were the subject matter of the above entitled suit.

Said representations being:

operation in Chicago; that he had considerable acquaintance and experience in this type of work;

(b) That his main vocation for some years was in the management of real properties;

(c) That he had experience in connection with Court receiverships;

(d) That he had experience locally (Los Angeles area), in the management of his own real properties;

(e) That he, or his relatives, owned similar properties; [196]

(f) That he maintained a place of business in the Los Angeles area and had, during the past several years, been employed in an executive capacity in various corporations; and

(g) That he then had time and was available to manage and operate the above apartment properties.

2. That the foregoing representations were true in that:

(a) Roy E. Hallberg's sole experience in the management of property consisted of his acting as an agent for a period of approximately one year, about the year 1931, as an agent and employee of the owner of the bonds of a bank situate and conducting its business in Chicago, Illinois, which bank became defunct, necessitating the owner of the bonds taking possession of certain real property in Chicago, Illinois. That Roy E. Hallberg's experience in the year 1931 did not qualify him by experience or training to

experience was in the management of a 14 apartment house situate in South Pasadena, California during the period from December 20, 1949, to November 29, 1950, and in the management of an unfurnished flat consisting of 4 units, situate in the City of Pasadena, California, during the period from December 29, 1950, to date, and said Roy E. Hallberg's experience in acquiring and selling two properties which were occupied by him when owned, in Los Angeles, California, and the acquiring of real property at Corona Del Mar, California. That Roy E. Hallberg had no experience as a personal representative of elderly and/or wealthy persons, in the management of apartment houses in Southern California, similar to the five apartment houses he undertook to manage and operate as receiver.

That Roy E. Hallberg, the receiver appointed by the Superior Court, knew at the time of his appointment that he would be employed by the County of Orange, California, as an auditor-appraiser, at a salary of approximately \$350.00 per month, and he was required to render services to said County without compensation during the work days of each week and month thereafter. That, in fact, said Roy E. Hallberg did work for and was an employee of the County of Orange during the period that he was required to actively manage and operate the apartment houses and other assets of the Rich-

and occupation during the period 1953 until March, 1947, was that of a wine salesman headquarters at Brooklyn, New York, and after said Roy E. Hallberg's occupation consisted of an attempt to sell electrical supplies, including Christmas tree lights, the establishing of distributorships for curtain rods, and an attempt to, investing \$18,000.00 as a principal, to manufacture construction tooth for use upon earth-moving equipment. That said Hallberg's experience in each of these ventures did not relate to or in any manner qualify [198] him to operate in excess of 400 apartments situate in the City of Los Angeles.

3. That your petitioner is informed and believes and upon information and belief states that it will be necessary to call the Honorable Ernest A. [200] as a witness to testify concerning the representations made by Roy E. Hallberg, to establish your petitioner's objections to Roy E. Hallberg's petition to be paid a reasonable fee for his services which petition Roy E. Hallberg alleges that amounts to approximately \$5,000.00 for his services during the period commencing with his appointment about September 2, 1953, to the termination of his duties on February 26, 1954, is a reasonable fee. That your petitioner has no objection to Roy E. Hallberg being awarded a reasonable fee, commensurate with the time he expended, based upon Roy E. Hallberg's earning capacity which has been for three or more years last past approximately \$

in this connection Petitioner is informed and
and upon information and belief states,
by E. Hallberg represented to the Honorable
A. Tolin that he would actively manage said
apartment houses; that Roy E. Hallberg did
actively manage said apartment houses, but did
his duties to Katherine Cosgrove, whom he
(erg) represented to be his secretary and did,
period of time after his appointment, conceal
Katherine Cosgrove was, in fact, Mrs. Roy E.
erg.

Therefore, petitioner prays that the Honorable
A. Tolin disqualify himself to hear and de-
the issues pending upon the fees of Roy E.
erg and his attorney, and to hear and deter-
the accounting of Roy E. Hallberg.

dated: April 30, 1954.

BRADY, NOSSAMAN & PAULSTON
and

JOSEPH T. ENRIGHT,

By JOSEPH T. ENRIGHT,

Attorneys for Defendant

[199]

Verified.

Authorities

Any justice or judge of the United States
disqualify himself in any case in which he
s * * * a material witness * * *” 28 USCA

the presiding judge to disqualify himself
28 USCA 455.

Cyc. Fed. Proc. 2nd Ed., Vol. 1, P. 32, Par
and 23.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 30, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL PETITION FOR ALLOWANCE
OF FEES TO ATTORNEYS
RECEIVER

To the Honorable Ernest A. Tolin, Judge of
above entitled court:

Comes now Messrs. FitzPatrick & Whyte and
Whyte, as attorneys for Roy E. Hallberg, a
ceiver of all the real and personal property
stituting the former Richman Trust, and for
supplemental petition for allowance of fees for
ditional legal services heretofore necessarily
formed by them both for and on behalf of
Receiver and for and on behalf of themselves
and after March 18, 1954, to and including March
1954, respectfully report and show as follows:

1. Petitioners incorporate herein by reference
and reallege as if herein set forth in full each
every allegation contained in Paragraphs 1

attorneys for Receiver, filed herein on March 4.

Petitioners have necessarily performed additional legal services both for and on behalf of the Trust and for and on behalf of themselves [202] from and after March 18, 1954, to and including March 18, 1954, in connection with the administration of the business and affairs of the former Richman Trust and in connection with the defense of the Trust and his attorneys against the objections raised by defendant Richman on or about April 6, 1954, by defendant Richman to the report and petitions of the Receiver and the attorneys for fees. One of the petitioners, John Whyte, has devoted a total of 28.4 hours of attorneys' time to the performance of said additional legal services as shown on daily time sheets kept by attorneys in the offices of FitzPatrick & Whyte. Of this total of 28.4 hours of attorneys' time, approximately 8.7 hours are allocable to services performed in connection with the administration of the business and affairs of the former Richman Trust, approximately 11.7 hours are allocable to services performed in connection with the defense of the Receiver against the objections raised by defendant Richman to the Receiver's report and petitions for allowance of a fee, and approximately 8.0 hours are allocable to services performed in connection with the defense of the attorneys for the Trust against the objections raised by defendant

which have been necessarily so performed by
tioners is likewise shown on said daily time
and is as follows:

Nature of Legal Services Performed
Date, 1954

March 18: Telephone call from Robert I
insurance broker, re what to do about work
compensation insurance policies—Whyte re
him to Camusi. Proofreading final copy of p
of Receiver's attorneys for fees. Details incid
service and filing of Receiver's report and p
for fee and petition of Receiver's attorneys fo
Letter to Camusi turning over certain pap
him and enclosing check from Brookshire pr
endorsed by Hallberg. [203]

March 24: Details incident to service and
notice of hearing on Receiver's report and p
for fee and petition for fees to his attorneys.

March 25: Telephone call from Air Po
Control, Inc., re installation of equipment in
erators at Oliver Cromwell and Canterbury.
phone call from Enright re form of Rec
report and petition for fee. Letter to Enrig
swering his letter to Whyte, dated March 24,
Letter to Hallberg advising him of time of h
on his report and petition for fee.

April 2: Telephone call from Camusi re his
lems in consummating settlement with Richma
Enright—Camusi inquired what amount th
owner would ask for as a fee.

titions of Receiver and his attorneys. Letter
Hallberg enclosing copy of said objections.

l 8: Telephone call to Mrs. Hallberg re Rich-
objections to Receiver's report and petition
and arranging for meeting with Hallberg
same.

l 10: Conference with Mr. and Mrs. Hallberg
man's objections to Receiver's report and
for fee.

l 12: In court re scheduled hearing on Re-
report and petition for fee and attorneys'
for fees.

l 16: Received letter from Robert Dulley re
ce matters. Letter to Camusi requesting that
care of this matter.

l 19: Telephone call from Robert Dulley re
ation by Receiver of workmen's compensa-
04] policies on the five apartment houses.

l 21: Conference at Whyte's office between
t and Whyte during which latter exhibited
ner his time slips and correspondence file
action.

l 22: Whyte present at taking of depositions
Hallberg and himself in Enright's office. Con-
s with Mr. and Mrs. Hallberg prior to and
course of depositions.

l 24: Whyte present at continuance of dep-
s of Hallberg and himself in Enright's office.

black memorandum book which was returned to the deposition reporter.

April 30: Telephone call from Camusi inquiring about taking of depositions and discussion of how to handle refund from insurance company amounting to approximately \$4,000.

May 1: Whyte read original of his deposition and corrected his answers wherever necessary -- noted corrections on copy of deposition.

May 3: Letter to Hallberg re his deposition conference with Hubert Laugharn of the Los Angeles Bar re his appearance as an expert witness on behalf of FitzPatrick & Whyte as to the reasonable value of their services as the Receiver's attorneys.

May 5: Drafting and dictating supplemental petition for fees to attorneys for Receiver. Conference with Mr. and Mrs. Hallberg re Receiver's demand to Richman's objections to Receiver's report and petition for a fee. [205]

May 6: Drafting, dictating, and revising supplemental petition for allowance of fees to attorneys for Receiver. Telephone call to Mr. Bleacher of Pollution Control, Inc. seeking information regarding history of installation of incinerator equipment at Oliver Cromwell. Delivering pleadings to Hubert Laugharn for his study as an expert witness on reasonable value of services rendered by attorneys for Receiver.

May 7: Efforts to line up expert witnesses on reasonable value of Receiver's services in managing the estate of the late Hubert Laugharn.

on for defending a receiver against charges has performed his duties improperly. Filing of Hallberg and Whyte.

10: Telephone call to Hubert Laugharn re testimony as an expert witness as to reasonable value of our attorneys' fees. Dictating portion of supplemental petition for allowance of fees for Receiver. Telephone call to Jefferson re his employment as an expert witness as to the reasonable value of Hallberg's services. Telephone call to Mrs. Hallberg re continuance of trial to May 12, and evidence to be presented at trial.

Petitioners desire to call the Court's attention to the fact that certain of the additional legal services hereinabove referred to are in the nature of extraordinary, rather than ordinary, services. This category would fall the services rendered in connection with defending the Receiver and his attorneys against the objections filed herein by defendant Richman to the report and petitions of the Receiver and his attorneys for fees.

Petitioners allege that the reasonable value of ordinary legal services as in Paragraph 3 set forth, exclusive of the extraordinary services hereinabove mentioned in Paragraph 4, is the sum of \$250.00. Petitioners do not wish to state any figure as representing the reasonable value of the extraordinary services mentioned in Paragraph 4.

tioners for the performance of said extraordinary legal services.

Wherefore, petitioners pray as set forth in original petition for allowance of fees to attorneys for Receiver, filed herein on March 18, 1954, that they pray that the order referred to in prayer of said original petition fix and allow a further sum of \$250.00 as a reasonable attorneys' fee to FitzPatrick & Whyte and John Whyte, attorneys for the Receiver herein, for the extraordinary legal services heretofore necessarily performed by them in connection with the administration of the business and affairs of the former Richman Corporation from and after March 18, 1954, to and including May 10, 1954; and that said order include a further sum as this Court may in its discretion determine to be a reasonable attorneys' fee for the extraordinary legal services necessarily performed by them in defending the Receiver and his attorneys against the objections filed herein on or about April 6, 1954, by defendant Richman to the order and petitions of the Receiver and his attorneys for fees.

Dated: May 11, 1954.

FITZPATRICK & WHYTE
JOHN WHYTE

/s/ By JOHN WHYTE,
Petitioners.

Duly Verified.

of District Court and Cause.]

TRANSCRIPT OF POINTS AND AUTHORITIES OF PLAINTIFF, LYDA TIDWELL, REGARDING PRE-TRIAL HEARING ON DISTRIBUTION OF FUNDS REMAINING UNDER CONTROL OF COURT

I.

has jurisdiction to settle accounts, declare rights of plaintiff and defendant Richman to and remaining in Receiver's hands and to order disposition in accordance therewith.

Defendant Richman claims on Page 11 of his Objections to the Receiver's Report that he and Plaintiff Lyda Tidwell are entitled to apply to a Court competent jurisdiction to initially and originally define their respective rights to the funds remaining in the hands of the Receiver.

This proposition is incorrect. This Court has jurisdiction of the fund and jurisdiction to decide what persons are entitled to distribution of the fund, and the amounts.

In *Pacific Bank vs. Madera Fruit, Etc. Co.*, 124 Cal. 5, plaintiff dismissed suit after a Receiver was appointed and after the receiver had taken possession of certain assets. Thereafter the receiver filed an account and petition and asked the court to approve the same, fix his [221] compensation, et cetera. Plaintiff then filed a motion to discontinue the

ruled and this ruling was affirmed on appeal. The decision of the court notes that not only do courts retain jurisdiction to settle the receiver's account, but it also retains jurisdiction to dispose of the funds in the receiver's possession, saying, "the receiver,

"* * * is still amendable to the court as its orders until he has complied with its directions as to the disposal of the funds which he has received during the course of his receivership."

The Pacific Bank case also states, at Page 527: "* * * If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, nor make any disposition of the funds in his hands, how could the account be settled or the funds disposed of? The money on hand and collected by the receiver was in contemplation of law in the hands of the court and to be disposed of as the law directs." (Emphasis

And,

"If the court in which the receiver was appointed cannot, after the dismissal of the case, settle the accounts of the receiver, to what jurisdiction will *be* resort? The dismissal of the case was the end of it as between the parties, but we think the court still retained the power to settle the accounts of its receiver and to direct the application of the funds in his hands." (P. 527) (Emphasis

ours.)

It is clear that the receiver is holding funds

perior Court, 88 Cal. 413, 417, the court quoting from Beach on Receivers, sec. 249, though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, holding is not merely for the benefit of such party or of any other party; it is the holding of the court for the equal benefit of all persons who may be legally adjudged by the court to have rights in the property. (Emphasis ours.)

In *State vs. Gibson*, 21 Ark. 140, the court, referring to its jurisdiction over a receiver after dismissal of the case, said,

"The receiver was an officer of the court and subject to its control in relation to the partnership effects placed in his hands as receiver until discharged by the court."

For the same effect, see *Ireland vs. Nichols*, 40 How. 171; *Whiteside vs. Pendergast*, 2 Barb. Ch. 471.

II.

The case between Plaintiff and Defendant, Frederick I. Richman, over funds remaining under the control of court after payment of fees to Receiver and Receiver's attorney.

This Court has been advised, plaintiff purchased all the right, title and interest of defendant in the assets known as the Richman Trust.

the Receiver for approval of his account, provision for the sale of the properties to the tiff and then, subject to certain terms and tions, any moneys remaining in the hands Receiver are to be divided equally. In other if there were no dispute between plaintiff and defendant at this time, the Court would divide between them the funds remaining under the trol of the Court after the deduction thereof fees to be paid to the Receiver and his att. However, a dispute has arisen between plaintiff and defendant as to the meaning and interpretation of the written offer made by defendant. Herein will be set out the claims in dispute, and those pertaining thereto. [223]

1. Plaintiff was forced to pay out of her funds the real property taxes on the five apartment houses in the Trust for the period January 1 through June 3, 1954, in the amount of \$14,952. Plaintiff claims that taxes for the months of January and February, 1954, should have been paid equally by plaintiff and defendant. The taxes assessed for these two months amount to \$4,952.

The offer of defendant provides in paragraph 4 thereof as follows:

“4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Manhattan Trust from March 1, 1954 on or until the

graph 5 of said offer provides as follows:

The receiver shall file his report and after payment and/or provision for all of the receivings and expenses and operating obligations of the Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. [redacted] and Mr. Richman."

Reading of paragraphs 4 and 5 above demonstrates without question that Mrs. Tidwell was to pay all obligations beginning March 1, 1954, but not the "operating obligations" of the Richman Trust for the months of January and February, 1954, were to be borne equally by the parties. While there seems to be no question as to the meaning of the above stated paragraphs in defendant's offer, should there be any ambiguity, it must be resolved in favor of defendant since he was the one who made the offer. Mr. Williston on Contracts, Revised Edition, 1938, 1944, 1953, 1958, 1961, 1964, 1967, 1970, 1973, 1976, 1979, 1982, 1985, 1988, 1991, 1994, 1997, 2000, 2003, 2006, 2009, 2012, 2015, 2018, 2021, 2024, 2027, 2030, 2033, 2036, 2039, 2042, 2045, 2048, 2051, 2054, 2057, 2060, 2063, 2066, 2069, 2072, 2075, 2078, 2081, 2084, 2087, 2090, 2093, 2096, 2099, 2102, 2105, 2108, 2111, 2114, 2117, 2120, 2123, 2126, 2129, 2132, 2135, 2138, 2141, 2144, 2147, 2150, 2153, 2156, 2159, 2162, 2165, 2168, 2171, 2174, 2177, 2180, 2183, 2186, 2189, 2192, 2195, 2198, 2201, 2204, 2207, 2210, 2213, 2216, 2219, 2222, 2225, 2228, 2231, 2234, 2237, 2240, 2243, 2246, 2249, 2252, 2255, 2258, 2261, 2264, 2267, 2270, 2273, 2276, 2279, 2282, 2285, 2288, 2291, 2294, 2297, 2300, 2303, 2306, 2309, 2312, 2315, 2318, 2321, 2324, 2327, 2330, 2333, 2336, 2339, 2342, 2345, 2348, 2351, 2354, 2357, 2360, 2363, 2366, 2369, 2372, 2375, 2378, 2381, 2384, 2387, 2390, 2393, 2396, 2399, 2402, 2405, 2408, 2411, 2414, 2417, 2420, 2423, 2426, 2429, 2432, 2435, 2438, 2441, 2444, 2447, 2450, 2453, 2456, 2459, 2462, 2465, 2468, 2471, 2474, 2477, 2480, 2483, 2486, 2489, 2492, 2495, 2498, 2501, 2504, 2507, 2510, 2513, 2516, 2519, 2522, 2525, 2528, 2531, 2534, 2537, 2540, 2543, 2546, 2549, 2552, 2555, 2558, 2561, 2564, 2567, 2570, 2573, 2576, 2579, 2582, 2585, 2588, 2591, 2594, 2597, 2600, 2603, 2606, 2609, 2612, 2615, 2618, 2621, 2624, 2627, 2630, 2633, 2636, 2639, 2642, 2645, 2648, 2651, 2654, 2657, 2660, 2663, 2666, 2669, 2672, 2675, 2678, 2681, 2684, 2687, 2690, 2693, 2696, 2699, 2702, 2705, 2708, 2711, 2714, 2717, 2720, 2723, 2726, 2729, 2732, 2735, 2738, 2741, 2744, 2747, 2750, 2753, 2756, 2759, 2762, 2765, 2768, 2771, 2774, 2777, 2780, 2783, 2786, 2789, 2792, 2795, 2798, 2801, 2804, 2807, 2810, 2813, 2816, 2819, 2822, 2825, 2828, 2831, 2834, 2837, 2840, 2843, 2846, 2849, 2852, 2855, 2858, 2861, 2864, 2867, 2870, 2873, 2876, 2879, 2882, 2885, 2888, 2891, 2894, 2897, 2900, 2903, 2906, 2909, 2912, 2915, 2918, 2921, 2924, 2927, 2930, 2933, 2936, 2939, 2942, 2945, 2948, 2951, 2954, 2957, 2960, 2963, 2966, 2969, 2972, 2975, 2978, 2981, 2984, 2987, 2990, 2993, 2996, 2999, 3002, 3005, 3008, 3011, 3014, 3017, 3020, 3023, 3026, 3029, 3032, 3035, 3038, 3041, 3044, 3047, 3050, 3053, 3056, 3059, 3062, 3065, 3068, 3071, 3074, 3077, 3080, 3083, 3086, 3089, 3092, 3095, 3098, 3101, 3104, 3107, 3110, 3113, 3116, 3119, 3122, 3125, 3128, 3131, 3134, 3137, 3140, 3143, 3146, 3149, 3152, 3155, 3158, 3161, 3164, 3167, 3170, 3173, 3176, 3179, 3182, 3185, 3188, 3191, 3194, 3197, 3200, 3203, 3206, 3209, 3212, 3215, 3218, 3221, 3224, 3227, 3230, 3233, 3236, 3239, 3242, 3245, 3248, 3251, 3254, 3257, 3260, 3263, 3266, 3269, 3272, 3275, 3278, 3281, 3284, 3287, 3290, 3293, 3296, 3299, 3302, 3305, 3308, 3311, 3314, 3317, 3320, 3323, 3326, 3329, 3332, 3335, 3338, 3341, 3344, 3347, 3350, 3353, 3356, 3359, 3362, 3365, 3368, 3371, 3374, 3377, 3380, 3383, 3386, 3389, 3392, 3395, 3398, 3401, 3404, 3407, 3410, 3413, 3416, 3419, 3422, 3425, 3428, 3431, 3434, 3437, 3440, 3443, 3446, 3449, 3452, 3455, 3458, 3461, 3464, 3467, 3470, 3473, 3476, 3479, 3482, 3485, 3488, 3491, 3494, 3497, 3500, 3503, 3506, 3509, 3512, 3515, 3518, 3521, 3524, 3527, 3530, 3533, 3536, 3539, 3542, 3545, 3548, 3551, 3554, 3557, 3560, 3563, 3566, 3569, 3572, 3575, 3578, 3581, 3584, 3587, 3590, 3593, 3596, 3599, 3602, 3605, 3608, 3611, 3614, 3617, 3620, 3623, 3626, 3629, 3632, 3635, 3638, 3641, 3644, 3647, 3650, 3653, 3656, 3659, 3662, 3665, 3668, 3671, 3674, 3677, 3680, 3683, 3686, 3689, 3692, 3695, 3698, 3701, 3704, 3707, 3710, 3713, 3716, 3719, 3722, 3725, 3728, 3731, 3734, 3737, 3740, 3743, 3746, 3749, 3752, 3755, 3758, 3761, 3764, 3767, 3770, 3773, 3776, 3779, 3782, 3785, 3788, 3791, 3794, 3797, 3800, 3803, 3806, 3809, 3812, 3815, 3818, 3821, 3824, 3827, 3830, 3833, 3836, 3839, 3842, 3845, 3848, 3851, 3854, 3857, 3860, 3863, 3866, 3869, 3872, 3875, 3878, 3881, 3884, 3887, 3890, 3893, 3896, 3899, 3902, 3905, 3908, 3911, 3914, 3917, 3920, 3923, 3926, 3929, 3932, 3935, 3938, 3941, 3944, 3947, 3950, 3953, 3956, 3959, 3962, 3965, 3968, 3971, 3974, 3977, 3980, 3983, 3986, 3989, 3992, 3995, 3998, 4001, 4004, 4007, 4010, 4013, 4016, 4019, 4022, 4025, 4028, 4031, 4034, 4037, 4040, 4043, 4046, 4049, 4052, 4055, 4058, 4061, 4064, 4067, 4070, 4073, 4076, 4079, 4082, 4085, 4088, 4091, 4094, 4097, 4100, 4103, 4106, 4109, 4112, 4115, 4118, 4121, 4124, 4127, 4130, 4133, 4136, 4139, 4142, 4145, 4148, 4151, 4154, 4157, 4160, 4163, 4166, 4169, 4172, 4175, 4178, 4181, 4184, 4187, 4190, 4193, 4196, 4199, 4202, 4205, 4208, 4211, 4214, 4217, 4220, 4223, 4226, 4229, 4232, 4235, 4238, 4241, 4244, 4247, 4250, 4253, 4256, 4259, 4262, 4265, 4268, 4271, 4274, 4277, 4280, 4283, 4286, 4289, 4292, 4295, 4298, 4301, 4304, 4307, 4310, 4313, 4316, 4319, 4322, 4325, 4328, 4331, 4334, 4337, 4340, 4343, 4346, 4349, 4352, 4355, 4358, 4361, 4364, 4367, 4370, 4373, 4376, 4379, 4382, 4385, 4388, 4391, 4394, 4397, 4400, 4403, 4406, 4409, 4412, 4415, 4418, 4421, 4424, 4427, 4430, 4433, 4436, 4439, 4442, 4445, 4448, 4451, 4454, 4457, 4460, 4463, 4466, 4469, 4472, 4475, 4478, 4481, 4484, 4487, 4490, 4493, 4496, 4499, 4502, 4505, 4508, 4511, 4514, 4517, 4520, 4523, 4526, 4529, 4532, 4535, 4538, 4541, 4544, 4547, 4550, 4553, 4556, 4559, 4562, 4565, 4568, 4571, 4574, 4577, 4580, 4583, 4586, 4589, 4592, 4595, 4598, 4601, 4604, 4607, 4610, 4613, 4616, 4619, 4622, 4625, 4628, 4631, 4634, 4637, 4640, 4643, 4646, 4649, 4652, 4655, 4658, 4661, 4664, 4667, 4670, 4673, 4676, 4679, 4682, 4685, 4688, 4691, 4694, 4697, 4700, 4703, 4706, 4709, 4712, 4715, 4718, 4721, 4724, 4727, 4730, 4733, 4736, 4739, 4742, 4745, 4748, 4751, 4754, 4757, 4760, 4763, 4766, 4769, 4772, 4775, 4778, 4781, 4784, 4787, 4790, 4793, 4796, 4799, 4802, 4805, 4808, 4811, 4814, 4817, 4820, 4823, 4826, 4829, 4832, 4835, 4838, 4841, 4844, 4847, 4850, 4853, 4856, 4859, 4862, 4865, 4868, 4871, 4874, 4877, 4880, 4883, 4886, 4889, 4892, 4895, 4898, 4901, 4904, 4907, 4910, 4913, 4916, 4919, 4922, 4925, 4928, 4931, 4934, 4937, 4940, 4943, 4946, 4949, 4952, 4955, 4958, 4961, 4964, 4967, 4970, 4973, 4976, 4979, 4982, 4985, 4988, 4991, 4994, 4997, 5000, 5003, 5006, 5009, 5012, 5015, 5018, 5021, 5024, 5027, 5030, 5033, 5036, 5039, 5042, 5045, 5048, 5051, 5054, 5057, 5060, 5063, 5066, 5069, 5072, 5075, 5078, 5081, 5084, 5087, 5090, 5093, 5096, 5099, 5102, 5105, 5108, 5111, 5114, 5117, 5120, 5123, 5126, 5129, 5132, 5135, 5138, 5141, 5144, 5147, 5150, 5153, 5156, 5159, 5162, 5165, 5168, 5171, 5174, 5177, 5180, 5183, 5186, 5189, 5192, 5195, 5198, 5201, 5204, 5207, 5210, 5213, 5216, 5219, 5222, 5225, 5228, 5231, 5234, 5237, 5240, 5243, 5246, 5249, 5252, 5255, 5258, 5261, 5264, 5267, 5270, 5273, 5276, 5279, 5282, 5285, 5288, 5291, 5294, 5297, 5300, 5303, 5306, 5309, 5312, 5315, 5318, 5321, 5324, 5327, 5330, 5333, 5336, 5339, 5342, 5345, 5348, 5351, 5354, 5357, 5360, 5363, 5366, 5369, 5372, 5375, 5378, 5381, 5384, 5387, 5390, 5393, 5396, 5399, 5402, 5405, 5408, 5411, 5414, 5417, 5420, 5423, 5426, 5429, 5432, 5435, 5438, 5441, 5444, 5447, 5450, 5453, 5456, 5459, 5462, 5465, 5468, 5471, 5474, 5477, 5480, 5483, 5486, 5489, 5492, 5495, 5498, 5501, 5504, 5507, 5510, 5513, 5516, 5519, 5522, 5525, 5528, 5531, 5534, 5537, 5540, 5543, 5546, 5549, 5552, 5555, 5558, 5561, 5564, 5567, 5570, 5573, 5576, 5579, 5582, 5585, 5588, 5591, 5594, 5597, 5600, 5603, 5606, 5609, 5612, 5615, 5618, 5621, 5624, 5627, 5630, 5633, 5636, 5639, 5642, 5645, 5648, 5651, 5654, 5657, 5660, 5663, 5666, 5669, 5672, 5675, 5678, 5681, 5684, 5687, 5690, 5693, 5696, 5699, 5702, 5705, 5708, 5711, 5714, 5717, 5720, 5723, 5726, 5729, 5732, 5735, 5738, 5741, 5744, 5747, 5750, 5753, 5756, 5759, 5762, 5765, 5768, 5771, 5774, 5777, 5780, 5783, 5786, 5789, 5792, 5795, 5798, 5801, 5804, 5807, 5810, 5813, 5816, 5819, 5822, 5825, 5828, 5831, 5834, 5837, 5840, 5843, 5846, 5849, 5852, 5855, 5858, 5861, 5864, 5867, 5870, 5873, 5876, 5879, 5882, 5885, 5888, 5891, 5894, 5897, 5900, 5903, 5906, 5909, 5912, 5915, 5918, 5921, 5924, 5927, 5930, 5933, 5936, 5939, 5942, 5945, 5948, 5951, 5954, 5957, 5960, 5963, 5966, 5969, 5972, 5975, 5978, 5981, 5984, 5987, 5990, 5993, 5996, 5999, 6002, 6005, 6008, 6011, 6014, 6017, 6020, 6023, 6026, 6029, 6032, 6035, 6038, 6041, 6044, 6047, 6050, 6053, 6056, 6059, 6062, 6065, 6068, 6071, 6074, 6077, 6080, 6083, 6086, 6089, 6092, 6095, 6098, 6101, 6104, 6107, 6110, 6113, 6116, 6119, 6122, 6125, 6128, 6131, 6134, 6137, 6140, 6143, 6146, 6149, 6152, 6155, 6158, 6161, 6164, 6167, 6170, 6173, 6176, 6179, 6182, 6185, 6188, 6191, 6194, 6197, 6200, 6203, 6206, 6209, 6212, 6215, 6218, 6221, 6224, 6227, 6230, 6233, 6236, 6239, 6242, 6245, 6248, 6251, 6254, 6257, 6260, 6263, 6266, 6269, 6272, 6275, 6278, 6281, 6284, 6287, 6290, 6293, 6296, 6299, 6302, 6305, 6308, 6311, 6314, 6317, 6320, 6323, 6326, 6329, 6332, 6335, 6338, 6341, 6344, 6347, 6350, 6353, 6356, 6359, 6362, 6365, 6368, 6371, 6374, 6377, 6380, 6383, 6386, 6389, 6392, 6395, 6398, 6401, 6404, 6407, 6410, 6413, 6416, 6419, 6422, 6425, 6428, 6431, 6434, 6437, 6440, 6443, 6446, 6449, 6452, 6455, 6458, 6461, 6464, 6467, 6470, 6473, 6476, 6479, 6482, 6485, 6488, 6491, 6494, 6497, 6500, 6503, 6506, 6509, 6512, 6515, 6518, 6521, 6524, 6527, 6530, 6533, 6536, 6539, 6542, 6545, 6548, 6551, 6554, 6557, 6560, 6563, 6566, 6569, 6572, 6575, 6578, 6581, 6584, 6587, 6590, 6593, 6596, 6599, 6602, 6605, 6608, 6611, 6614, 6617, 6620, 6623, 6626, 6629, 6632, 6635, 6638, 6641, 6644, 6647, 6650, 6653, 6656, 6659, 6662, 6665, 6668, 6671, 6674, 6677, 6680, 6683, 6686, 6689, 6692, 6695, 6698, 6701, 6704, 6707, 6710, 6713, 6716, 6719, 6722, 6725, 6728, 6731, 6734, 6737, 6740, 6743, 6746, 6749, 6752, 6755, 6758, 6761, 6764, 6767, 6770, 6773, 6776, 6779, 6782, 6785, 6788, 6791, 6794, 6797, 6800, 6803, 6806, 6809, 6812, 6815, 6818, 6821, 6824, 6827, 6830, 6833, 6836, 6839, 6842, 6845, 6848, 6851, 6854, 6857, 6860, 6863, 6866, 6869, 6872, 6875, 6878, 6881, 6884, 6887, 6890, 6893, 6896, 6899, 6902, 6905, 6908, 6911, 6914, 6917, 6920, 6923, 6926, 6929, 6932, 6935, 6938, 6941, 6944, 6947, 6950, 6953, 6956, 6959, 6962, 6965, 6968, 6971, 6974, 6977, 6980, 6983, 6986, 6989, 6992, 6995, 6998, 7001, 7004, 7007, 7010, 7013, 7016, 7019, 7022, 7025, 7028, 7031, 7034, 7037, 7040, 7043, 7046, 7049, 7052, 7055, 7058, 7061, 7064, 7067, 7070, 7073, 7076, 7079, 7082, 7085, 7088, 7091, 7094, 7097, 7100, 7103, 7106, 7109, 7112, 7115, 7118, 7121, 7124, 7127, 7130, 7133, 7136, 7139, 7142, 7145, 7148, 7151, 7154, 7157, 7160, 7163, 7166, 7169, 7172, 7175, 7178, 7181, 7184, 7187, 7190, 7193, 7196, 7199, 7202, 7205, 7208, 7211, 7214, 7217, 7220, 7223, 7226, 7229, 7232, 7235, 7238, 7241, 7244, 7247, 7250, 7253, 7256, 7259, 7262, 7265, 7268, 7271, 7274, 7277, 7280, 7283, 7286, 7289, 7292, 7295, 7298, 7301, 7304, 7307, 7310, 7313, 7316, 7319, 7322, 7325, 7328, 7331, 7334, 7337, 7340, 7343, 7346, 7349, 7352, 7355, 7358, 7361, 7364, 7367, 7370, 7373, 7376, 7379, 7382, 7385, 7388, 7391, 7394, 7397, 7400, 7403, 7406, 7409, 7412, 7415, 7418, 7421, 7424, 7427, 7430, 7433, 7436, 7439, 7442, 7445, 7448, 7451, 7454, 7457, 7460, 7463, 7466, 7469, 7472, 7475, 7478, 7481, 7484, 7487, 7490, 7493, 7496, 7499, 7502, 7505, 7508, 7511, 7514, 7517, 7520, 7523, 7526, 7529, 7532, 7535, 7538, 7541, 7544, 7547, 7550, 7553, 7556, 7559, 7562, 7565, 7568, 7571, 7574, 7577, 7580, 7583, 7586, 7589, 7592, 7595, 7598, 7601, 7604, 7607, 7610, 7613, 7616, 7619, 7622, 7625, 7628, 7631, 7634, 7637, 7640, 7643, 7646, 7649, 7652, 7655, 7658, 7661, 7664, 7667, 7670, 7673, 7676, 7679, 7682, 7685, 7688, 7691, 7694, 7697, 7700, 7703, 7706, 7709, 7712, 7715, 7718, 7721, 7724, 7727, 7730, 7733, 7736, 7739, 7742, 7745, 7748, 7751, 7754, 7757, 7760, 7763, 7766, 7769, 7772, 7775, 7778, 7781, 7784, 7787, 7790, 7793, 7796, 7799, 7802, 7805, 7808, 7811, 7814, 7817, 7820, 7823, 7826, 7829, 7832, 7835, 7838, 7841, 7844, 7847, 7850, 7853, 7856, 7859, 7862, 7865, 7868, 7871, 7874, 7877, 7880, 7883, 7886, 7889, 7892, 7895, 7898, 7901, 7904, 7907, 7910, 7913, 7916, 7919, 7922, 7925, 7928, 7931, 7934, 7937, 7940, 7943, 7946, 7949, 7952, 7955, 7958, 7961, 7964, 7967, 7970, 7973, 7976, 7979, 7982, 7985, 7988, 7991, 7994, 7997, 8000

It has been held that operating obligations
penses include taxes. See Schmidt vs. Lou
C.&L. Ry. Co., 84 S.W. 314, 315, 119 Ky. 287;
igan Public Utilities Com. vs. Michigan State
phone Co., 200 N.W. 749, 751, 228 Mich.
Fleischer vs. Pelton Steel Co., 198 N.W. 444
183 Wis. 151.

2. Mrs. Tidwell paid from her separate
water, gas, telephone and electric bills for a
tion of February, 1954, in the sum of \$1,8
Since there is no question but that such utilities
are operating obligations, plaintiff contends
this said amount should be equally borne by
parties.

3. Two catalytic units were ordered by defen
Richman during his tenure as agent for the
for two of the apartment houses. These we
stalled during the administration of Mr. Ric
and the receiver. Mr. Richman signed a contract
pay \$1,329.40 for each of the units, or a total
\$2,658.80. These catalytic units were ordered
cause of a dispute with the Air Pollution Control
District, or some such similar agency, and con
tuted an operating obligation of the Trust prior to
March 1, 1954. Here again plaintiff contends
defendant should share equally in this cost.

4. Defendant Richman claims that the Receiver
had collected certain rents between February
and February 28th, 1954 which should have
retained by him so that defendant Richman
share in the same to the extent of one half the

ome of these moneys collected by the Re-
represented February, 1954, rents, and some
nted March, 1954, rents. However plaintiff
Tidwell contends that \$4,499.29 worth of
1954, rents were collected by the Receiver
ained by him. Plaintiff Tidwell contends that
ntitled to all of the March, 1954, rents, even
collected in February.

again an interpretation of paragraphs 4 and
e offer [225] as above quoted should be in-
ed to mean that all obligations existing up
uary 28, 1954 and all income for that same
belongs to the parties jointly, but that all
ons from March 1, 1954, must be assumed
ntiff Tidwell, and it therefore follows that
ikewise entitled to all receipts for March,
nd subsequent months.

ursuant to the written offer of defendant
n above referred to and the unqualified ac-
e of said offer by the plaintiff Lyda Tid-
e parties entered into an escrow at California
nd the escrow stated that internal revenue
in the amount of \$577.50 and seller's escrow
the amount of \$329.00, or a total of \$906.50,
be borne by the buyer, Mrs. Tidwell. How-
e escrow also stated "These instructions are
ended to and do not amend, alter, modify or
de any agreement outside of escrow between
Richman and me (Lyda Tidwell) and with

an involved agreement of purchase and sale then go into escrow and file escrow instructions the escrow instructions are inconsistent with prior written agreement, the question arises which is to control. This is a question of interpretation and the prior agreement and the escrow instructions must be read together. If the escrow instructions specifically state that the prior agreement is the controlling one then, of course, the agreement controls and not the escrow instructions. In *King vs. Stanley*, 32 Cal. (2d) 584, on rehearing after 189 Pac. (2d) 46, the court stated that escrow instructions which are mere customary and explicit directions to the escrow company do not take the place of the prior written agreement but merely carry it into effect.

In *Pigg vs. Kelley*, 92 Cal. App. 329, it was held that where a written agreement of sale and escrow instructions connected therewith show by their terms that they refer to the same sale, the two instruments must be construed together under Civil Code 1642 to ascertain the whole contract between the parties.

In *Womble vs. Wilbur*, 3 Cal. App. 527, it was held that where parties entered into a written agreement and in pursuance thereof entered into [226] an escrow whereby certain instructions were given to the escrow company, it is a question of interpretation of contracts and the surrounding circumstances as to whether the former agree-

ree that the previous written agreement is
be superseded by any escrow instructions.
ourse, an interpretation of the written offer
lerick Richman shows without question that
e was selling his interest in the assets of the
n Trust, he naturally is obligated to pay the
seller's fees such as revenue stamps and
escrow fees. There is no reason why the
ant should not therefore pay the said fees
were paid by plaintiff out of her own funds
ow.

efendant Richman claims that the Receiver
not have turned over to the plaintiff the
ash fund of \$785.00 thereby the defendant
seek to obtain one-half of that amount. How-
efendant's offer shows clearly that he was not
five apartment houses but rather all of his
title and interest in and to the assets of the
Richman Trust. There is no doubt that the
ash fund existing in a business or a trust is
et of that business or trust and therefore
idwell is entitled to the full amount of the
ash fund as the purchaser.

efendant Richman also claims that he is en-
o the payment of his agent's fees for the
of November, 1953, in the amount of \$3,-
There is absolutely no merit whatsoever in
attention. It should be borne in mind that the
was terminated by order of court and a judg-
termination of said Trust was entered. The

effect of the judgment was to wipe out the from the beginning as a void trust. In that of the legal proceedings of the above entitled plaintiff had a claim against defendant Richman for excessive fees which the defendant had charged over a period of almost eight years. The defendant had a substantial claim in the approximate amount of \$50,000.00 which, by virtue of the agreement entered into by the parties for settlement, was rendered, and both parties under [227] paragraph 1 of the offer were required to mutually release each other of any and all claims, known or unknown, that they might have against the other from the beginning of the world to the time of entering into the agreement. Since the Trust no longer existed the only claim which Frederick Richman might have against the plaintiff personally was for services rendered her in the administration of her property. This claim he surrendered by executing a release in her favor. It is true that paragraph 2 provides for the "payment and/or provision for" of the receiver's claims and expenses and other obligations of Richman Trust to February 1, 1954, * * *" However, a reading of the contract would demonstrate forcibly that no obligation to defendant Richman was to remain outstanding, and if there be any inconsistencies in the offer, the inconsistencies must be resolved against defendant.

8. Defendant Richman claims that the Receiver

be true that payment should have been made
tiff Tidwell from her own funds and de-
Richman would be entitled to a credit of
that amount. It is respectfully suggested
parties attempt to stipulate as to as many
acts as possible in the pre-trial hearing so
trial itself will be reduced to an argument
rather than a trial of facts coupled with an
nt of law.

etfully submitted,

MARTIN, HAHN & CAMUSI,

By WILLIAM P. CAMUSI,

Attorneys for Plaintiff, Lyda
Tidwell.

[228]

orsed]: Filed June 16, 1954.

f District Court and Cause.]

MINUTES OF THE COURT

June 21, 1954, at Los Angeles, Calif.

nt: Hon. Ernest A. Tolin, District Judge;
Clerk: Wm. A. White; Reporter: Virginia
; Counsel for Plaintiff: Robert Powsner;
for Defendants: Joseph Enright.

eedings: For pretrial hearing re division of
held by Receiver. (In Chambers.)

It is Ordered that counsel file stipulation those items agreed upon and that if stipulation not be reached, Court will hear oral argument

Court will receive stipulation or hear oral argument on July 6, 1954, 10 a.m.

Filed eight exhibits for defendants.

Defts.' Ex. A to H incl. are received into ev.

EDMUND L. SMITH, Clerk,

/s/ By WM. A. WHITE, Deputy Clerk

[Title of District Court and Cause.]

MEMORANDUM TO COUNSEL RE DISTRIBUTION OF FUNDS REMAINING UNDER CONTROL OF COURT AND ALLOWANCE OF FEES

The problems remaining before the Court are those arising from settlement of the Receiver's and Final Report and Account, the Objectives thereto, the various items to be considered in settlement of the Receiver, and distribution of monies remaining under control of the Court. General releases have been executed by the plaintiff. Plaintiff's release running to Defendant and certain other persons, and Defendant's release running to Plaintiff. The Richman Trust has not been released and must discharge its obligations. No release has the Receiver been released.

under the Trust indenture. The Court has held that the [230] Trust was procured by undue influence and has allowed Plaintiff to exercise her right of voiding it although it was not void ab initio but voidable only. As it has been voided, Defendant is not entitled to management fees as fixed by the contract by which the Trust was established. Since that contract has been set aside and the contract by which Defendant's fees were determined is void, the life thereof is no longer applicable. He is entitled to compensation from the Trust estate on a quantum meruit basis. The \$3,104.33 asked is based upon a charge of ten per cent of gross income of the Trust during a particular period of time. There was evidence that five per cent was a reasonable property management fee during the time asked for. Other evidence placed the reasonable value of such services somewhat higher. The Court holds that six per cent of the income is a proper quantum meruit allowance under all the circumstances of this case although if the case were one of long term fees for a long rather than a short term, a higher per cent would have been indicated. The Court now finds that the fees for the period in question shall be allowed at the rate of six per cent of gross income of the Trust during the period in question instead of at the rate specified in the contract which has been set aside.

Plaintiff has stipulated in the Escrow Instru-

standing by claiming inferences from an agreement that do not clearly flow from that written agreement. In preparation of the order hereon, the Court will recognize that it was the obligation of Mrs. Tidwell to pay for the revenue stamps and the escrow fee. [231]

It appears that Plaintiff has paid \$1,877.50 from her own fund in discharge of utility bills for gas and electricity provided to the properties formerly owned by the Trust during the time that such properties were being managed by the Receiver. In ordinary course, these bills would have been paid by the Receiver as they were incurred by him. Plaintiff is entitled to recover \$1,877.50 from the funds on hand as reimbursement of this item.

It appears that the various rents collected by Plaintiff because they were rentals which were being paid in advance for occupancy during the term of her ownership of the properties. Even if there had been proof of collection by Mrs. Tidwell as her agent of some past due rent originally payable to the Trust or its Receiver, still any such rents would have become payable to her upon the completion of the agreement because she bought all of the defendant's interest in the assets of that Trust. The Court finds that the agreement memorialized by Joseph T. Enright's letter to Laurence B. Marshall dated February 19, 1954, as adopted in writing by Frederick I. Richman and Laurence B. Marshall in a letter of February 25, 1954, and as adopted in

ets of Richman Trust* * *". If Mrs. Tidwell collected monies which were assets of the Richman Trust, then she has received no more than she purchased. If she has received rents which are not due the Richman Trust, it must follow that these are rents which are due her. She is entitled to have the funds now under control of the Trust divided without charging her for what she has received in this regard. [232]

Before the Receiver was appointed, Defendant conducted negotiations for the purchase of certain pollution control equipment referred to as catalytic converters for installation in the Canterbury and Cromwell properties. The question is now presented as to who should pay for these units. They were acquired by the Receiver during the course of his receivership but in doing so, he merely carried out a plan which had been put in motion by Plaintiff. These units were assets of the Trust at the time they were purchased. Under the terms of the letter agreement, they were sold to Plaintiff. The obligation to pay is the obligation of the Receiver as the Receiver incurred the expense during the administration of his Trust. Plaintiff was not a party to the purchase.

The petty cash fund is an asset of the Richman Trust. Mrs. Tidwell has purchased all of Defendant's interest in that Trust and that includes the petty cash fund which existed simply as an

are common to the day-to-day business transacted by resident apartment house managers.

The Court finds that real property taxes were an operating obligation of the Trust. Whereas Mrs. Tidwell was to assume (and did assume) the operating expenses of the Trust after a tax item of the sum of \$4,952.77 had accrued, even though the due date had not arrived, it is proper that she be reimbursed what she has paid out of her own pocket in payment of an operating expense which had arisen before she acquired her fee simple title. By assuming by express agreement the operating expenses as of a date after the time period in question. [233]

The March 1st installment upon a note, secured by a deed of trust, which was paid on February 27th, was paid for the benefit of the Plaintiff, although at the time the Receiver paid it, he had no reason to believe it would be a Receiver's obligation on the due date, and insofar as the Receiver's conduct is concerned, it was not unreasonable to pay a definite obligation three days in advance of its due date, equity will require that it be charged to the person for whose benefit it now appears a payment was made (a circumstance not forced upon February 27th). On that day it appeared that the Receiver would remain in possession. He did, and on the day the payment fell due Mrs. Tidwell was in charge and the benefit of the payment was hers.

ail what his services consisted of and prays reasonable fees. The Court bears in mind that Plaintiff has testified that ten per cent of the income was a reasonable management fee Defendant rendered the management service. Securing the contract with Plaintiff for that there was an over-reaching and undue influence. Fee was excessive. The Court bears in mind, that there is evidence in the record that various percentages including five per cent and six per cent could be a reasonable management fee. The Defendant in this instance acted as a property manager with the obligations of full trustee and of an agent of the Court. Mr. Richman, with whom he dealt, is a person given to hostile and aggressive attitudes. It is evident that he exercised these relations with the Receiver. The Receiver was obliged to go through the problem of setting up a management plan. [234] He was only allowed to execute the plan for a brief period before Receivership was abruptly terminated. He was taken out of possession hurriedly and he was terminated abruptly. It then became necessary for him to go through an accounting, and the accounting procedure was exhausted to its ultimate in searching into the conduct of the Receiver during and even before his Receivership. He spent several days in Court defending the administration of his trust and undergoing a most critical and insulting scrutiny of his

consideration given to the greater than usual
ation which was visited upon him and the
of making up his accounting and explaining
defending it in Court. The Court finds it to
true and correct account.

The Receiver had the services of an attorney
was employed with the approval of the Court
cept for attendance at and participation in
proceedings on the Receiver's account, the se
were of a routine character. The total sum of
ney fees allowed is \$1,000.00, this to include al
nary and extraordinary services for which fees
been prayed. It is noted that the total of Rece
and attorney fees is approximately \$2,500.0
than the fees which would have been enjoy
Defendant while handling a like sum of m
while he was in charge, and he also had a ri
incur legal expenses for which he could be co
sated over and above the fixed percentage. Fu
the Court's Receiver was in charge for a
month period whereas Defendant had adroitly
by over-weaning and deceptive means, obtai
contract for a lifetime. [235]

Counsel for Plaintiff will prepare an order
settlement under Rule 7.

Dated: This 5th day of October, 1954.

/s/ ERNEST A. TOLIN,

United States District Judge.

[Endorsed]: Filed October 5, 1954

of District Court and Cause.]

MEMORANDUM TO COUNSEL

Whereas John Whyte, Attorney for Roy E. Hall-
the Receiver herein, has protested to the
that the award of fees to the Attorney for
Receiver was inadequate, and the Court has
after summoned all parties and counsel before
heard further argument and fully re-considered
the matter of fixing attorney fees for the At-
for the Receiver:

Court does now direct that when the attor-
r plaintiff prepares and submits an order
ettlement of the Receiver's account, that such
shall provide that the fees for John Whyte
orney for Roy E. Hallberg, Receiver herein,
d at the sum of One Thousand Eight [237]
ed Dollars (\$1,800.00), and that the Receiver
nORIZED and directed to issue his check to said
Whyte for that sum.

ed: October 22, 1954.

/s/ ERNEST A. TOLIN,

United States District Judge. [238]

dorsed]: Filed October 22, 1954.

In the United States District Court, Southern
District of California, Central Division

No. 13,742-T

LYDA TIDWELL, et al., Plaintiffs

vs.

FREDERICK I. RICHMAN, etc. et al.,
Defendants

ORDER IN RE SETTLEMENT OF RE-
CEIVER'S ACCOUNT, Fees and Distributio
Funds in Hands of Receiver. (Under
Rules 7 of the U.S. District Court fo
Southern District of California.)

This matter having come on for final hearing on the 27th day of September, 1954, on the First Final Report and Account of the Receiver, Petition for Receiver's Fees and Petition for Receiver's Attorney's Fees and distribution of the balance remaining in the receiver's hands after payment of his fees and those of his attorney, plaintiff appearing by her attorneys, Martin, Hahn & Camusi, defendant Frederick I. Richman appearing by his attorneys, Brady, Nossaman & Paulson and Joseph T. Enright, by Joseph T. Enright, and the receiver Roy E. Hallberg having appeared through his attorney, John Whyte, and oral and documentary evidence having been previously submitted to the court and good cause

I.

Order arises as the result of the final settlement of a suit in this court to cancel an intervivos trust and for other relief, brought by [243] plaintiff, Lyda Tidwell, against defendant, Frederick I. Hallberg, and others, United States District Court No. 13,742-T. After trial of said matter on the issue of fraud and undue influence in the inception of the trust, this court gave judgment in favor of plaintiff and against defendant, and ordered that the trust be cancelled and dissolved, and this court appointed Roy E. Hallberg as receiver on December 1, 1953, to operate and conserve the assets of the trust pending a final determination of the matter by way of final judgment or settlement between the parties. The court approved the employment by the receiver of an attorney, John Whyte, to render legal services to said receiver in connection with the administration of said trust.

II.

On February 26, 1954, pursuant to stipulation of the parties, the court ordered that the receiver be relieved of his active duties of management, control and possession of the trust assets as of 5:00 p.m., Sunday, February 28, 1954, and that the receiver give over control and possession to plaintiff, Lyda Tidwell, of all the assets of the said trust including money in bank and under the control of

had arrived at an agreement for settlement of the entire action. The settlement of the entire action was between plaintiff and defendant Richman arose out of an offer made by defendant Richman to plaintiff by letter dated February 19, 1954, and as a result of said offer, plaintiff purchased all of defendant Richman's right, title and interest in and to the assets of said trust.

III.

Pursuant to stipulation, plaintiff took over the session of the assets of the trust, with the exception of money in bank and under the control of the receiver, at 5:00 o'clock p.m., February 28, 1954, in pursuance of the settlement of the action as previously described, dismissal of the action was entered in court, however, retaining jurisdiction of the matter for the purpose of settling the accounts of the receiver, fixing the fees of the receiver and his attorney, and disposing of any balance of the trust remaining [244] in the hands of the receiver, making provision for the payment of all the receiver's operating expenses and the fees of the receiver and his attorney.

IV.

The first and final report of the receiver and the petition for allowance of fee to receiver, together with the petition for allowance of fees to the attorney of the receiver, were filed. After allowance for receiver's fees and fees for his attorney, plaintiff and defendant are each entitled to one half of the

claims against said funds remaining because of certain charges which the receiver paid, or failed to pay. On or about February 28, 1954, the receiver failed to pay the March installment due on the trust's promissory note secured by a trust deed on the Oliver Ell Apartment house in the sum of \$2,027.27. The receiver did not pay defendant Richman any compensation for services rendered by said defendant as agent of the trust for the month of November, 1953, and defendant Richman has never been compensated for his services.

The receiver, having turned over the assets, books and records of the trust on February 28, 1954, failed to pay certain obligations incurred prior to that date during his administration. The receiver failed to pay certain utility bills incurred during the month of February, 1954, in the sum of \$1,300.00. The receiver also failed to pay any of the property taxes on trust assets for the months of January and February, 1954, which taxes amount to a sum of \$4,952.77. The receiver further failed to pay for two catalytic units in the sum of \$1,300.00 or \$2,600.00 for both units, which catalytic units were contracted for by defendant Richman and installed on the apartment houses during the receiver's administration. Plaintiff was not a party to the purchase of the catalytic units. Plaintiff paid the bills for utilities, taxes, and for the catalytic units from her own funds.

and [245] decreed that the said report as filed by the receiver is a true and correct account and that the court finds that the receiver has in his possession a balance of \$20,697.71, consisting entirely of the assets of the trust and said account and report is approved, and the same is allowed and settled as rendered; that said receiver, Roy E. Hallberg, is hereby discharged from further duties and responsibilities as receiver herein and his services are hereby exonerated; the reasonable value of the services of Roy E. Hallberg as receiver is the sum of \$6,000.00, which the Court finds to be the reasonable value of the said services, and his fees are hereby fixed at the sum of \$6,000.00; the reasonable value of the services of John Whyte, as attorney for the receiver in this matter, is the sum of \$1,800.00, and his fees are hereby fixed at the sum of \$1,800.00, which the Court finds to be the reasonable value thereof.

There remains on hand after allowance for payment of receiver's fees and the fees of his attorney the sum of \$12,897.71 which sum is payable to the plaintiff and defendant Richman as their interest may appear.

It is further ordered, adjudged and decreed that from the balance of funds remaining in the hands of the receiver in the sum of \$12,897.71, defendant Richman is entitled to the following credits: A reasonable fee for services rendered by him as attorney for the dissolved trust, which fee is fixed at six percent (6%) of the gross revenues for the month

igation of plaintiff; and defendant Richman
led to a credit of one-half of said mortgage
nt made for the month of March, 1954, said
f amounting to \$1,013.64, or a sum total of
of \$1,944.94.

further ordered, adjudged and decreed that
the balance of the funds remaining in the
of the receiver in the sum of \$12,897.71,
ff, Lyda Tidwell, is entitled to the following
: One-half of the said utility bills paid by
id one-half amounting to \$938.75; one-half
said taxes paid by her, said one-half amount-
\$2,476.38; one-half of the cost of the catalytic
paid by her, said one-half amounting to \$1,-
or a sum total of credits of \$4,715.13. [246]

further ordered that the receiver reimburse
f from the monies in his possession to the
of \$89.20, paid out by him for copies of the
ions used on the hearing herein.

further ordered, adjudged and decreed that
ance of said fund remaining, in the amount
37.64, after allowance for receiver's fees, at-
s' fees and said credits to both plaintiff and
ant Richman, be divided equally between
ff and defendant Richman in the amount of
82 each. Plaintiff is entitled to receive from
nd the total sum of \$7,833.95, and defendant
an is entitled to receive from said fund the

incurred by her in said escrow on behalf of defendant Richman as the seller therein.

It is further ordered, adjudged and decreed that defendant Richman is not entitled to any credit for any rents collected by plaintiff, nor is defendant Richman entitled to any credit for the said cash fund paid over to plaintiff.

It is finally ordered that neither plaintiff nor defendant Richman is entitled to any credit against said fund except for those specifically herein granted.

The receiver is ordered to disburse the funds in his hands in accordance herewith, except as otherwise ordered by the Court or the Appellate Court may award costs and fees to the receiver and his attorney in connection with any appeal.

Dated this 19th day of November, 1954.

/s/ ERNEST A. TOLIN,
Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed and entered Nov. 19, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Is from the Order and Judgment In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver, docketed and filed the 19th day of November, 1954.

Dated: December 15, 1954.

BRADY, NOSSAMAN & PAULSTON

and

JOSEPH T. ENRIGHT,

By JOSEPH T. ENRIGHT, [249]

Acknowledgment of Service by Mail attached.

Witness my hand and seal this 15th day of December, 1954.

of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that plaintiff, Lyda Tidwell, hereby appeals to the Ninth Circuit Court of Appeals from that portion of the Order In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver, docketed and filed the 19th day of November, 1954, which awards the sum of \$4,974.56, or any part thereof, to defendant, Frederick I. Richman, and which denies the distribution to plaintiff, Lyda Tidwell, to the sum of \$7,833.95. Plaintiff does not appeal from

Dated: December 17, 1954.

MARTIN, HAHN & CAMUSI

/s/ By WILLIAM P. CAMUSI,
Attorneys for plaintiff and
Appellant, Lyda Tidwell.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 20, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund I. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing numbered 1 to 261 inclusive, contain the original

Memorandum of Decision;

Order Appointing Receiver;

Ex Parte Motion for Order Staying Proceedings;

Oath of Receiver;

Bond of Receiver;

Notice of Motions re Appointment of a District Receiver;

Petition for Authority to Employ Counsel;

Order Authorizing Receiver to Employ Counsel;

Affidavit of Service by Mail of Order Authorizing Receiver to Employ Counsel;

Petition for Authority to Pay Christmas Bonus

Avit of Service of Order Appointing Re-

tion for Authority to Renovate Individual
ments, etc.;

ent to Petition for Authority to Renovate
lual Apartments, etc.;

ver to Petition of Receiver for Authority to
te and Consent of Plaintiff;

ment for Revocation and Avoidance of
and Appointment of Receiver;

r Extending Time Within Which Receiver
File His First Report and Petition for In-
ons, and Supporting Affidavit;

ce of Application and Motion for Permanent
er;

ement of Reasons and Points and Authorities
oport of Application and Motion for Per-
t Receiver;

ulation filed Feb. 26, 1954;

er filed Feb. 26, 1954;

tion for Allowance of Fees to Attorneys for
er;

t and Final Report of Receiver and Petition
lowance of Fee to Receiver;

ce of Hearing on (1) First and Final Report
ceiver, (2) Petition for Allowance of Fee to
er, and (3) Petition for Allowance of Fees

Dismissal With Prejudice;

Objections and Answer to Report and Petition of Receiver and his Attorney for Fees;

Objections to First and Final Report of Receiver;

Plaintiff's Reply to Objections of Defendant Frederick I. Richman;

Plaintiff Lyda Tidwell's Points and Authorities in Support of her Objections and her Reply to Defendant Richman's Objections;

Petition to Disqualify and Authorities;

Supplemental Petition for Allowance of Fees Attorneys for Receiver;

Pre-trial Memo, Receiver's Fund;

Memorandum of Points and Authorities of Plaintiff, Lyda Tidwell, Regarding Pre-trial Hearing Distribution of Funds Remaining Under Control of Court;

Memorandum to Counsel re Disposition of Funds Remaining Under Control of Court and Allowance of Fees;

Memorandum to Counsel;

Statement of Objections of Roy E. Hallberg, Receiver, etc., to Plaintiff's Proposed Order Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver;

Order in re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver;

gnation of Contents of Record on Appeal, by
ant;

e of Appeal to the Ninth Circuit Court of
s, by Plaintiff;

gnation of Contents of Record on Appeal, by
ff;

llee's Designation of Portions of Record,
lings, and Evidence to be Contained in
on Appeal;

ion for Extension of Time for Reporter
Rule 73g and Order; and a full, true and
copy of the Minutes of the Court on No-
30, 1953; December 2, 3, 4, 1953; April 12,
une 21, 1954; which, together with the orig-
efendant's Exhibits A-H inc. on the Pre-
earing June 21, 1954; and the original Re-
Exhibits 1-4 inc., and Defendant's Exhibits
e. on the hearing re payment of fees to the
r and his attorney; the Depositions of John
and of Roy E. Hallberg, each taken April
4; and 17 volumes of Reporter's Transcripts
eedings had on Nov. 30, 1953; Dec. 1, 2, 3,
; Jan. 15, 1954; April 12, 1954; May 12,
May 13, 14, 17, 1954; June 7, 8, 18, 21, 1954;
7, 1954; Oct. 12, 1954; all in said cause, con-
the transcript of record on appeal to the
States Court of Appeals for the Ninth Cir-

Witness my hand and the seal of said District Court, this 25th day of March, 1955.

[Seal]

EDMUND L. SMITH,
Clerk

/s/ By THEODORE HOCKE,
Chief Deputy

In the United States District Court for the Southern District of California, Central Division

No. 13,742-T—Civil

LYDA TIDWELL, etc., Plaintiff

vs.

FREDERICK I. RICHMAN, et al., Defendant

TRANSCRIPT OF PROCEEDINGS

Los Angeles, Calif., Monday, Nov. 30, 1955

Honorable Ernest A. Tolin, Judge Presiding

Appearances: For the Plaintiff: William Camusi, 530 West Sixth St., Suite 701, Los Angeles, Calif. For the Defendants: Joseph T. Enright, 13 South Spring St., Los Angeles 13, Calif. [1*]

(The following proceedings were had in chambers:)

The Court: Let's come on the record. Mr. Camusi is here for the plaintiff, and Mr. Enright

endant. The court has filed a memorandum
in the case.

many copies would you like, Mr. Enright?

Enright: If there could be two, I would ap-
peal it, but, if not, I can have copies made.

Court: I will hand you two.

Camusi: Do you have two for me?

Court: Yes. If anyone needs three, they
have three, because I asked Miss Leland to
make a number of copies.

Enright: I will take three. Mr. Nossaman
wants one.

Camusi: And I could use another one, if
you give it, Judge.

Court: All right.

(The copies were handed to counsel.)

Court: It has been, as you will note from
the record as the clerk probably has already told
you, the court's conclusion that the plaintiff should
have a receiver appointed and that a receiver should be appointed.
The court has called up the application for receiver-
ship which has been continued from time to time,
[2] on it in chambers without there having
been a renewal of the motion.

Receiverships are always complicated somewhat
because they start in the middle of an accounting period
of some sort, and while it isn't a provident case of
delay to wait until the beginning of a new

here in making adjustments and prorations, and
forth.

Although this memorandum is almost 19
long, a great deal has not been stated, and so
it, due to the desire of the court to avoid a
period of submission, has not been elaborated
to the extent that it was thought out by the
because to articulate sometimes the thoughts
would be set forth in detail in a memorandum
take more time here than would be consistent
a short submission period.

Now, we called Mr. Camusi and asked him
draw a suggested order for the appointment
receiver, and I will tell you tentatively what
court's idea was with respect to it.

I have on file here a great number of names
lawyers, some of them highly reputable and
experienced in receivership matters, who have
in from time to time and suggested that
would like to have receivership appointments.
But it has seemed to me that it would probably
more in keeping with the requirements of
case to appoint someone not a lawyer, but who
a particular acquaintance with the problems
inhere in the management of income prop-

I have asked for the names of some such people
from various bankers, not acquainting them
course, with the particular case, and I have
viewed a number of them. I have also thought

thinking that with Mr. Richman being an
y, it would perhaps be well to avoid having
er here who might have had either pleasant
erse experience with him, and I have come
ntative selection of a man named Mr. Roy
lberg.

Hallberg was for some years associated with
erty management operation in Chicago, and
nsiderable acquaintance and experience in that
f work. Since coming to California he has
arious positions with different types of cor-
ns, and has been engaged in the manage-
f property for elderly relatives who have
rable apartment property in Southern Cali-

led him and found that he is available, and
l him to come in here at about 2:00 o'clock
so that counsel could meet him. It was my
on to appoint him, [4] and inasmuch as the
r ordinarily needs counsel, to suggest to him
take legal counsel, not from any of the at-
s in this case, but that he select an attorney
own choice, whom the court would approve
elects any reputable member of the bar. He
ne if he could consult for his legal advice,
such as the receiver takes from the court,
n attorney who has until very recently been
'Melveny & Myers, which I understand is
e that has handled Mr. Hallberg's own legal

leave that firm for the purpose of setting up a
vate practice of his own.

Now, does anyone have an objection to Mr. Hallberg, or do you want to question him, or do you have an objection to his employment of counsel?

Mr. Camusi: Plaintiff's position, your Honor, is that we don't know Mr. Hallberg, but I guess your Honor has made quite an elaborate investigation, and it is our desire that there be some competent man unknown to either side or to counsel, and so with that statement, why, we are willing to go on the court's opinion of the man it has chosen.

The Court: I have known Mr. Hallberg in a rather offhand way for some time, but he is not a particular friend or even a close acquaintance, though his name has come up in [5] connection with the consideration of other names. I talked the other day to Mr. Paul W. Elmquist, who is the head of the Paul W. Elmquist Company, and it turns out, I think, that he is about as well qualified as Mr. Hallberg, but he has had various associations which might turn out to, as you say, ring in with him, and I had felt finally, after talking with these various people, that it would be better to select some one who, while knowing property management, had never engaged in it except as to his own and his immediate relatives' property in this locality.

I am hopeful the form of the order you

it ready, will be final, so that there will not liquidation of assets.

and in mind, first, calling upon some of the judicial receivers about town, and then it occurred to me that the usual professional receiver we know in this locality has ordinarily had as the objective of receivership the liquidation of the estate rather than the preservation of it and its distribution, and I didn't want to have a receiver here who had in mind turning property into cash by changing the form of the corpus of the estate materially. I think it ought to be kept as nearly as possible in status quo until judgment becomes final.]

I would like to hear some comment from counsel as to what that would be an appropriate bond.

Enright: The evidence shows the amount of money being received, gross moneys being received each month. The evidence further shows that the moneys had been expended each month in payment of operating expenses or reduction of Union indebtedness. The evidence further shows that at the end of the trial defendant presented evidence that there was an outstanding secured obligation upon one of the apartment houses, the name of which I recollect to be the Oliver Cromwell. If it isn't that one, it is some other one——

Camusi: That is correct.

The evidence further showed that Internal Revenue's investigation had resulted in its objection to the rates of depreciation theretofore taken by the trustees or the managing agent.

The sum total of this status of the evidence was that there will be no substantial amount of cash on hand from month to month, other than the monthly collections, and, therefore, it would seem to me that all parties should endeavor to keep the expense, and to fix the bond at an amount not exceeding one and one-half times monthly collections. Those being the only personal property except a few notes receivable, and I can't call from memory, it would seem to me that the bond should be commensurate with the amount—not the cash amount, but the value of the property that one might have, and we certainly do not conjecture that one might, appropriate. That is my thought as to the bond.

The Court: I had been thinking loosely in the way in which probate bonds are fixed, and that the bond should be sufficient to cover the value of the readily liquidatable assets, where it would not be for a title search, or something of that nature.

Mr. Enright: That is right.

The Court: So how much money would a person acting in this capacity have in his possession at any one time?

Mr. Enright: I don't see how it could be more than a few hundred dollars at any one time.

are. In probate practice I believe they take
ur; they take a whole year of income. But
uld be an awfully high bond in this case, and
with Mr. Enright. I don't think we should
the probate rule in that respect.

I don't know, but I was thinking of a bond
ere between fifty and one hundred thousand
Mr. Enright mentions one and a half times
y rental collections. That [8] would be some-
around fifty thousand.

Court: Are all of these indebtednesses amor-
that there are monthly payments upon trust

Enright: There is only one that I know of.

Camusi: There is only one, and the pay-
n that is about \$5,000 a month.

Enright: That is my recollection, about
a month.

Court: I take it, then, you are thinking of
in terms of about \$50,000.

Camusi: I would say \$75,000 personally.

Court: 75,000.

Camusi: With some kind of a provision that
ys on hand exceed that amount, it might be
ed upon order of the court, or something.

Court: Yes.

Cleaver: Mr. Hallberg is here.

Court: Have him come in.

Thereupon, Mr. Hallberg enters chambers.

ter, which I discussed with you last week, I have asked counsel if there is any objection to this course, the defendant feels no doubt that he should have won the case, but since a receiver [9] is appointed—whether they have any objection to the selection of the court as receiver.

Now, they haven't announced any objection, they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some time was in the management of real properties, and at times in connection with court receiverships, that your experience in it locally has been in the management of your own real properties, and that these were of income nature, and of similar properties owned by either you or your wife's relatives.

Mr. Hallberg: That is correct.

The Court: Now, if counsel wish to question Hallberg before the appointment is actually made, the clerk will swear him, and you may ask any questions you wish.

Mr. Enright: On behalf of the defendant, Your Honor, I am in no position at this time to impeach or impege this gentleman. I am satisfied that your Honor would not have selected anyone except a man of not only integrity, but of ability. But my objection goes to the proposition of the appointment, Your Honor, and I will seek, and now seek time to consider what steps are required under the procedure of this court to hand against him.

see, your Honor, my basic position is that I present a member of the bar, and I do represent a person who, [10] I submit, under all the circumstances has never taken one red cent from this estate from the date of its execution and for years in the operation of the joint venture.

Considering those circumstances, that is, a person who has a license, a professional license, and is here to appropriate anything, why, his moral responsibility would be involved, I do plead that this appointment be withheld for a few days, during which I will research the procedural aspects of an appointment; and, secondly, ascertain what expenses would be incurred if he were to bond against the appointment of a receiver, because it is my recollection under Rule 56—I believe it is 56—concerning the appointment of receivers, that it is an appealable order, and I am sure the court appreciates that as trial attorney, cannot make these decisions without consultation with my senior, Mr. Nosse, and with my client, also an attorney.

I would seriously plead for a little time here in considering the court's decision, and considering the appointment. But never do I question the appointment upon the ground of the integrity of this person's qualifications, because I have no doubt that the court thoroughly investigated that aspect before selecting Mr. Holmberg—is that it?

Court: Holmberg

state that to me personally, and so far as I state on behalf of my client, his selection of an attorney from the O'Melveny & Myers firm seems very good to me, because it is one of the finest firms in the community.

The Court: What I understand he has in mind is the selection of an attorney who is able to leave them,—

Mr. Hallberg: He has just left.

The Court: —for the purpose of forming his own legal practice. What is his name, Mr. Hallberg?

Mr. Hallberg: John Whyte. That is W-h-y-t-e.

The Court: Of course, an order appointing a receiver is an appealable order, but it cannot be appealed from until it is made.

Mr. Enright: Yes.

The Court: I think it is not appropriate for the defendant to remain longer in control as trustee for several reasons which do not reflect upon whether or not he has been taking money from the trust. I don't understand that there is any charge that he has ever stolen anything. Of course, there is an action for an accounting based upon various grounds, which we need not enumerate here, which include, among other things, that he has allowed himself, in my opinion, to think, excess fees to himself. Is that not it?

Mr. Camusi: That is one of the grounds.

The Court: Then, too, one of the matters which is treated in the memorandum that is today

on, and since it has been determined that not entitled to enter into that, or, at least, its entry into it was voidable at the option of the trustor, it would not appear just that he should continue to earn or receive the considerable payments which the contract provided for him during the extended period that elapses between the appointment and appeal in cases of this character.

I would like Mr. Hallberg to begin his duties as receiver upon his qualifying.

Can you have an order for us, Mr. Ca-

Camusi: I will have it.

Court: —we will either execute it, or make some revision in it.

Now these gentlemen, Mr. Hallberg, have talked about the bond. The bond that is commonly required of an executor or administrator under California law is for one year's gross income from the property. The properties here would produce such a figure for one year's gross income would be quite considerable. It is rather contemplated that the beneficiaries under this trust will receive funds from the time, and there are indebtednesses and recurring expenses, which a receiver would have to administer, which will mean that he would never have in his possession or under his control the ordinary course of administration a year's income. So it has been suggested

in this case, and the court will and does fix in that sum.

Do you have an order of appointment drawn by Mr. Camusi?

Mr. Camusi: It has been drawn, your Honor, and I hope to get it up here shortly this afternoon.

Mr. Enright: May it please the court,——

The Court: Yes.

Mr. Enright: ——I haven't read the decision of the written decision filed this day, but may I make a comment upon the statement just made by the court, that is, concerning the fees received by Mr. Enright, the man, the defendant.

If that be the occasion for the appointment of a receiver, this day or within the next few days, again I point out that the most he could do would be to pay himself, and I here offer to see that he does not pay himself the fees received under the contract, and that the moneys can be impounded until we have had opportunity to present the impeachable aspects of the appointment of a receiver.

The Court: There are considerable comments on the record, and the court is going to appoint a receiver as soon as an [14] appropriate order is presented to the court.

Mr. Enright: I just want to make my position clear.

The Court: Yes. Now, if you gentlemen will consult with the receiver whom I have indicated,

ns which you feel might enter into the em-
ent he is about to assume.

ow you have another engagement, Mr. En-
out you might take just along enough to get
hange of names, addresses, telephone num-
nd the like.

a going to suggest to Mr. Hallberg, who I
has a place of business somewhere around
briel or San Marino, or South Pasadena,—

Hallberg: It is in Pasadena.

Court: And you live at Corona del Mar?

Hallberg: That is correct.

Court: —that it would probably be a con-
e to the estate, and possibly an economy to
ome of the untenanted apartment or apart-
be made a headquarters for the receiver-
ring its duration, so that you would have a
arters for the purpose of this case in one of
erties which is to be managed. But you can
at over with the attorneys.

Hallberg: Yes, sir. [15]

Court: I believe that is all we can do at
ment.

will have your order up during the day,
musi?

Camusi: Yes, sir.

Court: Then Mr. Hallberg can take over

other department, and I have to leave. We will operate in every respect with Mr. Hallberg.

The Court: Thank you. Mr. Cleaver, will you indicate that they have an agreeable place to work? They might want to use the witness room, or might use the jury room a more comfortable place, or they might prefer to use your room, although there are a lot of books in there.

Thank you, gentlemen. [16] * * * * *

Los Angeles, Tuesday, Dec. 1, 1953, 4:45 p.m.

The Court: All right, Mr. Wyatt.

Mr. Wyatt: We are in this position, if Your Honor please, we would like, if possible, to obtain a stay one way or another. We should like to know if the court will set the amount of bond that the defendant would be required to file in order to obtain a supersedeas bond.

The situation is this: Under the Federal Rules of Civil Procedure the defendant may obtain a stay of execution, as a matter of right, by filing a supersedeas bond. He can do that at or after the time of appeal.

It is doubtful whether he can do it before the appeal. And we are in this difficult predicament, that the defendant has not yet been served, that no judgment has been entered and he has received no appointment of a receiver.

The Court: Mr. Wyatt, I think perhaps the concern isn't quite as imminent as you have been

this, but I assumed that because he and his
y had been around visiting apartment build-
d informing the manager she should turn
over to him, that he complied with all those
ments. [2]

rather surprised to find he hasn't yet filed

Court: While there has been a receiver ap-
a great many times it has been that in other
s that maybe they let them have a little dif-
bonding procedure.

ed the bond. He went out to get it. I under-
ne bond would be presented to the court at
clock this morning. No one has been in.

Wyatt: I see. Well, the bond is only one of
enses. Frankly, we are trying to avoid, in
ng the stay pending the hearing of our mo-
which was the reason I submitted the other
tion for a stay pending the proceedings,
uch time as you could hear our battery of
s on the receivership, that that was the main
it is within the discretion of this court to
y order that he grants pending, well, in the
on of the court, upon such terms as he
just.

as my feeling at the time I submitted that
that if we could obtain a stay we would
one, the expense of a bond premium, if we
make a further showing to the court, we

be further stayed by granting the stay, until the motions could be heard, that the court would impute the expense of an accounting of these funds to which the receiver has already been attempting to obtain.

If he has not filed any bonds under a mistake under misapprehension, thinking he would get the funds without having filed the bond, that is another expense which may yet be avoided if we obtain an order staying the order until such time as the motions are heard on Thursday.

If I may, I would like to renew my motion under those circumstances, since I find out he hasn't obtained a bond himself.

The Court: The bond will have to be approved by the court and he isn't entitled to take over the estate, under the rules, that are in this district until he has posted a bond and taken the oath.

* * * * *

Los Angeles, Friday, Jan. 15, 1954, 2:40 p.m.

The Court: I am sorry, gentlemen, for coming 40 minutes late. I had two reasons for this.

One of them was a civic duty which kept me about 15 minutes, and the other was a writ of habeas corpus which was waiting for attention in chambers when I got back, and it took me until the present time.

All of this I hoped might bring about an amicable resolution of your dispute. If it does not, we are going to hear your case.

in five apartment houses included among
of the former Richman Trust.

court knows of the written approval which
n filed by the litigant Lyda Tidwell and the
on which has been filed by Mr. Richman and,
se, the petition which Mr. Hallberg filed.

t we might do, unless you have arrived at
isposition, would be to have Mr. Hallberg
e stand and let anyone question him who
bearing in mind, I hope, that the judge
whatever is filed here. I am not ignorant of
ne issue is. But ask him any questions that
nk should be brought out to give us a proper
[2] upon which to act, and then I will hear
rguments or comments.

nyone thinks of a better way to proceed, let
ow.

Enright: Your Honor, it may be a better
proceed in this way: That I do not construe
chmond's answer to the petition as an ob-
at all. We construe his answer to be an at-
on his part, and in his behalf, to inform the
er as best we can concerning this property
Mr. Richman had for some period of time
d.

defendant feels and believes that the Re-
should have full authority to spend all
available to carry out a program of rehabil-
the property. If he, the Receiver, is of the

coming in, those should be received, and any moneys in his possession, to properly take care of those properties.

Our answer is one drafted with the intent for the purpose of giving to the Receiver our knowledge based upon Mr. Richman's, I can just a little more than 20 years' experience in operating multiple income property in this immediate vicinity.

So I do not consider we have an objection.

The Court: Maybe "objection" was an unfortunate word. [3] I didn't construe what you would file as being a consent, that the Receiver go ahead and do the particular things in toto which the Receiver thinks, according to its petition should do.

So let's get, if we can get clarified, what should do now.

Do you think it might be worth-while to have him come up here and have him state what he thinks should be done, in order to properly place the properties into the best condition and to get the provident yield which can be expected in his administration?

Mr. Enright: I have no questions to ask, I ask you, of the Receiver on such a question.

Secondly, so far as Mr. Richman's answer is concerned, it is deemed without prejudice, that your Honor, filed in the manner which it is, without prejudice. I will say without prejudice because

Court: I understand that.

Enright: You do, your Honor?

Court: Yes. You take the position there have been a judgment for the defendant, and the appointment of a receiver and judgment plaintiff is not the result which the evidence arguments spelled out.

Enright: Yes, your Honor. [4]

Court: Well, that is the position usually the party who loses a lawsuit takes.

I understand, by being cooperative with the Receiver, nothing has been waived, and I appreciate that Mr. Hallberg, on occasions when he has been here, has told me of very nice cooperation that Mr. Richman has given him in regard to matters where they have had occasion to work together, and that even on some occasions Mr. Richman has gone beyond the mere request which the Receiver had made for information and had given the cooperation on a voluntary, very useful basis.

What I want to know now is to have a foundation upon which we leave the court today for an order which will tell Mr. Hallberg definitely what he is to do in the matter, where he has asked us for instructions.

He has come here somewhat in the spirit and attitude of an executor of an estate who asks for instructions. And as we all know, that is a common

to the purpose we wish to accomplish ultimately by the judgment, and without bringing any for litigation over the things that have proceeded in this matter.

Mr. Enright: I can only say, your Honor, the best I could do would be to merely ask that the Receiver read the [5] answer I drafted and to then suggest that if the Receiver desires Mr. Richman's views upon a particular problem pertaining to a program on any one of the houses or as to the houses that I would appreciate his consultation direct with Mr. Richman.

I am not sufficiently informed in finances of individual apartment house operations to cross-examine or examine Mr. Hallberg.

Secondly, I wouldn't feel in a position to conduct such an examination, because to me it is a day-to-day and current problem that anyone managing and operating properties in excess of a value of a million dollars has. He must have authority, we think. He must have discretion in exercising that authority.

That is all I have to say on that score.

The Court: Mr. Whyte, do you have anything that you think ought to be further brought to the court's attention?

Mr. Whyte: There are one or two facts which are not incorporated in the petition which I intend to file with the court. I thought that for the purpose of this hearing, I should not want to go into details.

adduce one or two additional facts in support of the petition. [6]

ROY E. HALLBERG

as a witness in his own behalf, having been duly sworn, was examined and testified as follows:

Clerk: Please be seated.

Q: Full name?

Witness: Roy E. Hallberg.

Direct Examination

(By Mr. Whyte): Mr. Hallberg, calling attention to the fact that your petition for authority to renovate was filed on December 18, 1953, and that this is January 15, 1954, are you aware with any change in the situation which has taken place at the Fountain Manor Apartment since the date of filing your petition for authority to renovate?

A: We have had four vacancies develop practically overnight. These vacancies apparently were caused by the apartments not being in tenable condition. By that I mean they were getting quite dilapidated. The entire effect there was one that the tenants would not be conducive to continue living there.

Q: Did you go out and claimed they found better apartments in the area in better condition at

(Testimony of Roy E. Hallberg.)

they complained of? [7] A. They did,

Q. That, you say, has been quite recently?

A. Practically overnight, the last two nights.

Q. Have you had any trouble with the heating at the various apartment houses?

A. I understand they are giving considerable trouble in certain apartments. And it is quite apparent something will have to be done there.

Q. Did you have in mind using some of the money for renovation to take care of that heating problem? A. Yes.

Q. What problems have you had at the West Arms Apartment House recently, in regard to decorating of apartments?

A. Well, we took over the building on January—December 1st. There were seven vacancies. When in going into those apartments, they were extremely dirty and actually they were more or less carried out the decorating scheme of about 1928.

In other words, they weren't modern. They had a tan color that was more or less prevalent at that time, and the lamps were old, quite. I would say they were obsolete.

Q. May I interrupt just for a moment?

A. Yes.

Q. Is the decor, that is, the decorating scheme and the colors at each one of the five apartment buildings rather [8] old-fashioned?

ony of Roy E. Hallberg.)

and in there. It is carried through. Tan color
to be predominant.

Will you continue what you were telling us
the Western Arms?

That is not the present-day attitude toward
lamps in living rooms and homes; they want
color.

When I interrupted you, will you just con-
tinue with what you were telling us about the
Western Arms?

The lamps are quite old. They are not being
replaced any more. And they do create an atmosphere
in the home that isn't at all pleasant, especially when
the way modern apartments are being fur-

Did you have any experience at the Western
where you renovated one of the apartments
and that, as a result of that renovation, you
were able to increase the rent?

Yes, we did have one that we tried out, just
to see what would happen. We were able to rent
it for a little bit more money.

What particular item of renovation did you

That was painting—different colors entirely
repainting the furniture, which is mostly over-

(Testimony of Roy E. Hallberg.)

Q. Did you then demand of the tenant an additional rent be paid?

A. Yes, we asked for a higher rent with a tenant, and they paid it.

The Court: What was the differential?

The Witness: It was only \$5.00 a month, but just shows what could be done.

Q. (By Mr. Whyte): Calling your attention to the Fountain Manor, is it true that one of the apartments there had been vacant for about two months at the time you took office as Receiver?

A. That is correct. That is a two-bedroom apartment and it had been shown any number of times to various prospective tenants. None of them would take it because, in the first place, the stove in that particular apartment was really pretty well worn out, and it would have cost about \$50.00 to replace that stove.

Q. What did you do with respect to the stove, if anything?

A. We went out and succeeded in buying a new stove for, I think it was about \$99.98, and we replaced that in.

The next morning the first party took it and said, "Oh, boy, what a brand-new stove, what a brand-new stove," and we [10] rented it.

Q. For how much are you renting that apartment?
A. \$135.00 a month.

Q. That was the same apartment that had

mony of Roy E. Hallberg.)

What is the condition as to the tile in the
sinks and the sinks at the Western Arms
apartments?

Well, they are—the tile is not in good con-
dition here. The sinks have tile all around on sort
of a work shelf, a work space there, and also around
the sides of the sink. It has also about, I would
say 6 inches of tile back splash against the wall.
I would say 60 per cent of the apartments in that
building have tile in front of that sink that has big
pieces of tile broken out. It looks as though some-
body took a Ginger Ale bottle and was trying to
pop the cap off and just hit the top of it there, and
knocked some of the tile with it.

Isn't a very pleasant-looking sink the way it
looks? And there again the color of the tile is not
in harmony with the rest of the kitchen.

Have the tenants been complaining about
this condition?

Yes, some of the tenants have complained
about it. Of course, going into a kitchen that has
large pieces of tile [11] out right in front where
you can see it, it doesn't add to the appearance of that
kitchen.

Is it your particular purpose, if the court
gives you authority to renovate these apartments,
to renovate only individual apartments as it be-

(Testimony of Roy E. Hallberg.)

be allowed to go in and take these apartments when they became available and upgrade them.

I feel that by getting a better class of tenants attracted to the apartment we will be better off in the long run. The few dollars expended now, in the market that is getting a little bit more competitive, we are going to stand a little better—

Mr. Enright: Louder, please.

The Court: He said that with the market becoming a little more competitive—

The Witness: The market is becoming a little more competitive, and this experience we had last night and the night before, where four tenants moved out of one building, I think, points to the fact we are getting into a little more competitive market.

There are going to be a few more apartments available, and not having a completely accepted apartment to prospective tenants, our vacancy factor will gradually go up. I [12] think you will agree with me on that.

The Court: On the whole, has your vacancy factor gone up during your receivership?

The Witness: Up to this point our vacancy factor has gone down just a wee bit.

The Court: You have done some renovating before this petition?

The Witness: Yes, before this petition.

The Court: I might say counsel Mr. Hal-

mony of Roy E. Hallberg.)

It was a stove, but I am just using that as of an example; apartment equipment. But particular small item.

About the second or third call I told him, I think it would be better if you filed a petition to get some authority, and let the people who are owners of this property know what you are in mind, rather than to have informal conversations with the judge in chambers about it."

The petition was forthcoming. But I had understood he had put a stove in and that he was going to meet the market, which I think Mr. Richmond would have to no doubt do if he were continuing management.

We have had large insurance company operations in apartment house field which have come here very well, the past several years, but they are being increasingly reflected [13] in the situation where the over-population is not what it was, and the building and the like has been catching up with it.

Witness: Over at the Oliver Cromwell, around in that neighborhood, you have quite a few brand-new buildings, and those are direct competition to the Oliver Cromwell.

Just mention that because I was over there the other day and checked on the other streets. But we are going to have the same situation all over

(Testimony of Roy E. Hallberg.)

tion, any financing beyond payment of bills of current income?

The Witness: No, sir. I believe that this came worked out from the moneys that are received in rent, without going outside for any additional financing.

The Court: Do any other counsel wish to ask Mr. Hallberg any questions?

Mr. Martin: We have no questions, your Honor. We filed our consent.

Cross Examination

Q. (By Mr. Enright): Mr. Hallberg, did you not have an opportunity to examine the answer of Mr. Richman to your petition?

A. I just saw it this morning.

Q. I see. You do not have a copy of it? []

A. No, sir, not yet.

Q. I will furnish you with one.

The Court: It is quite full and quite detailed and sets forth a lot of experience that Mr. Richman tells us he has had with these particular properties. I think the Receiver should know about it and have the benefit of the information that is in it.

Thank you for giving him a copy.

Mr. Enright: That was the object of my coming in to ask questions of Mr. Hallberg, was to make certain that the details set forth in the answer were brought to his attention.

mony of Roy E. Hallberg.)

ions of the answer which you had filed? He
t had an opportunity to read that, as you
so I hardly think it would be right for you
rrogate him concerning the subject matter
answer.

Enright: Oh, no, I wouldn't do that. I have
lished the object I had in asking Mr. Hall-
ne questions so far, that is, bringing to his
on this answer.

nk that is all, your Honor.

of our problems is that we have no knowl-
Mr. Hallberg's experience in the particular
ther than what your Honor told us the day
appointed. We would appreciate Mr. Hall-
oing over his problems, if he [15] will, to
egree with Mr. Richman from time to time,
meets with the approval of the parties, be-
that is the only means we can have.

I say, second-guessing Mr. Hallberg's judg-
n shifting sinks in the Western Arms Apart-
which our answer shows is rapidly becoming
ged district, so far as colored people are con-

Witness: They are not there yet, but they
adually encroaching from the south.

Court: They are certainly entitled to it, and
o pay rent.

(Testimony of Roy E. Hallberg.)

mind that someone will have to decide whether or not they want the attorney to operate it in its present status or revert it to a house renting to colored people.

The Witness: Actually, there are no colored people there. They are further south.

Q. (By Mr. Enright): They are just over Country Club Drive. That is a block away, is that right? A. Yes.

Q. And just a block down further.

A. Right around the corner there in that vicinity [16] there are a lot of homes on the street back.

Q. Oh, yes. I live there, I know it very well and I am quite certain——

Mr. Martin: It should be a safe territory if you live there, Mr. Enright.

Mr. Enright: Was there some question of safety?

Mr. Martin: No. I say we are not going to worry about it as long as you live near there; we feel we are in good hands.

The Court: The petition is drawn in terms asking for authority to do whatever improvement and renovation is necessary, to the extent of not exceeding \$500.00 for each unit in the apartment.

It is drawn in a way that leads the court

mony of Roy E. Hallberg.)

in others; but, in any event, a maximum of

tells us now he does not propose to incur any
m indebtedness or to do anything which
necur a hypothecation of the title to the prop-
that he can do what he has in mind out of
expenses, so the petition will be granted.

Whyte, I think you brought in an order,
rou?

Whyte: I have not, your Honor. I think
icated [17] you might endorse on the peti-
t it is so ordered.

Camusi: We have no objection to it.

Court: If the clerk will hand up the peti-
will put that endorsement on it.

e is another matter in this case with which
ncerned. When were the objections, if any,
indings of fact and conclusions of law and
d judgment, or the alternate documents of
racter—

Camusi: I understood the 16th.

Enright: That is right, the 16th that will
ile. I am afraid by mail, your Honor, be-
didn't finish dictating until just before I
p here.

Court: I understand that in lieu of having
el order drawn, which, of course, is some

(Testimony of Roy E. Hallberg.)

the bottom of the petition the words, "This
tion is granted."

Mr. Martin: So stipulated.

Mr. Camusi: So stipulated.

The Court: It is now so endorsed. You
your order, Mr. Hallberg.

The Witness: Thank you.

(Witness excused.)

The Court: We will look for either your ar
ments, [18] objections or acquiescence in for
to what has heretofore been filed, when I come
to court after the week end. If there is any di
we will have a chambers conference on it,
court hearing, whatever the nature of what is
indicates will be appropriate.

I don't mean for you not to say what you
I will look it over. If it appears to justify a
hearing, we will set it for hearing as near to i
diately as can be arranged, with the proper r
and recognition of the commitments of counse
the court, with what accords with other counse

If it turns out that you are as agreeable in
matter as you were in the one today, we will si
enter the one which has been agreed upon
form, understanding in no sense is it agreed
to being a decision on the merits of the case
only as to the form of judgment, form of fin
and conclusions. And then you can get on
either amicable disposition of this controversy

[Whereupon, at 3:15 o'clock p.m., Friday, January 15, 1954, an adjournment was taken.)

* [19]

Los Angeles, Monday, April 12, 1954, 11:00 a.m.

Clerk: 13,742, Lyda Tidwell vs. Frederick
man, et al., hearing on first and final report
Receiver; petition for allowance of fee to Re-
petition for allowance of fees to attorney for
r.

Court: Counsel, we have in mind there are
sic quarrels here. One as to how the money
hands of the Receiver shall be divided, that
t special credit shall be allowed to one party
ged against the other. I don't think we can
re of that in the time that remains today,
re going to take care of the other.

Other is a matter of allowance of fees for
Receiver and for his attorney.

ems to me we can excise that from the first
r it separately.

e is currently or there was as of the end
week, at least, a misapprehension, I think,
ow the Receiver came to be appointed.

Receiver didn't come to the court and make
resentation. The Receiver didn't ask for the
ment.

ve a list of many people who have come in
om time to time asking to be considered as

It is true that when he came in I asked him to state some things for counsel, so they would know whether they cared to have him embark as Receiver, having in mind that we would appoint someone else if this one were unsatisfactory to you. I think I told you so.

I have known this man, it is true, rather casually, but I have known of his reputation in the community and I have known of properties in this community which he has managed, which are reputedly successful.

So I am not going to hear any evidence on whether he should have been appointed. The time for that has passed. He has now discharged his duty and the question is shall he be paid, and if so, how much.

Now, we will proceed to hear that issue, and if there is a quarrel with his figures and you think you need an accounting, you think you need an audit by an accountant, we will allow a moderate but ample time for the procurement of such an audit.

However, if either litigant wants to have the figures audited, the court is going to have them audited and I will take the fact that you are willing to hire an auditor and have them audited as a fact. If there is no confidence in the Receiver, a more substantial flag than simply saying he is a man of doubtful fidelity, the way it has been said in briefs, [3] words are not pleadings.

If you want to go ahead and have an audit

—I don't know yet who—satisfactory to
court, and one who doesn't know the Receiver.
I'll make him take an oath to that, and have
it.

It turns out the Receiver is either a miserable
deceiver, and these records are in bad shape, or
a man of no fidelity and has served in that
way here, or with that taint, then the expense
of audit will be assessed against the Receiver.
If it turns out there is no substance to it, it will be
charged to the person who made the challenge.

Enright: I take it the court desires a reply.

Court: No. The court desires evidence.

Enright: If your Honor please, I would
point out that we sincerely meant every word
said in our objection. We intend to produce
evidence in support of it.

I understand the law to be that upon a peti-
tion filed by a receiver, that upon an objection
made, that they constitute the pleadings, that
the complaint and an answer. And upon the issue
being joined, then the matter is set down for trial.
We desire to avail ourselves of that due process,
which is, a trial involving these moneys.

Court: You don't want to try it today?

Enright: No, your Honor.

Court: All right. It is going to be divided
as we have suggested, that is, we are going to try
the merits of what, if anything, the Receiver

The balance of it can be deposited by the Receiver into the registry of the court. The registrar hold it while Mrs. Tidwell and Mr. Richman continue their timeless litigation.

Mr. Enright: That is acceptable. Now, as to the timeless litigation matter, I take it that that can be litigated between them and they can join the issue and get their litigation started. Or is that to be ruled on today, too?

The Court: No. From what you say you do not want anything heard or ruled on today.

Mr. Enright: No. I agree to this court hearing the attorney's fee and the Receiver's fee, and the matter be set down for trial at any time convenient to the parties and to the court.

But I do desire to take the Receiver's deposition and the attorney's deposition before then, and then make a further investigation of the record. [5]

Mr. Whyte: May I ask a question of counsel for your Honor?

The Court: Yes.

Mr. Whyte: Before we embark upon a long and terribly contested hearing as to the Receiver's fees and his attorney's fees, I would like to ask counsel the meaning of the last paragraph of his objections filed by him on behalf of Mr. Richman.

He says at page 12 of those objections, line

"That the trial of the issues created by the pleadings be not had until your answering def-

00 fees and the attorneys' petition for more \$3,000.00 fees and for such other and further as may be just and proper in the premises." I understand from that language that the defendant, Mr. Richman, desires a hearing in the matter that the Receiver wishes the court to assess him more than \$4,500.00 for his fees and the attorney more than \$3,000.00 for his fees?

Enright: I don't know what the Receiver is asking as yet. I asked you specifically, Mr. Whyte, wouldn't you inform me so we could make a statement on our own part, but I didn't get that.

Whyte: The Receiver is asking for \$4,500.00 or \$5,000.00 [6] which I assume he is—from our telephonic conversation I assume that to be his position regarding extraordinary fees, then I assure you, sir, that I desire a trial on the merits.

Whyte: Do I understand then if the Receiver is willing to take \$4,500.00 and if his attorney is willing to take \$3,000.00 you do not desire a trial on the merits?

Enright: No. There has been further point made since then. As I understand the issue, there is a collateral issue now and I don't know what the intention of the court is on it.

Whyte: I will receive a brief this morning and I can state it, if necessary, that the plaintiff Lyda Tidwell desires that this case be decided on the merits.

That, I understand, according to their plead here, is to be determined by this court and that separate and distinct new cause of action, issue.

And the most unusual part of it is that they now asking us to pay revenue stamps, pay insurance policy on the property as conveyed, when the escrow they signed carrying out that agreement specifically agrees that Lyda Tidwell pay the

But going back, Mr. Whyte, to your answer would say in this status of the record that we do to have a hearing [7] and an opportunity to present evidence, if the Receiver expects \$4,500.00 any sum substantially near that amount.

The Court: There is such a sharp conflict presented by the pleadings that, on one basis, the Receiver might get more than a thousand, and on others he might get ten. I can't tell from the pleadings. The court has to have the evidence, unless the parties are able to acknowledge certain things to be true.

The Receiver says that Mr. Richman let the property run down to where rain came in and ruined the otherwise suitable painting and cost the estate several hundred dollars to correct the fault which reasonably prudent management, even minimum management, I should say, would have prevented.

Mr. Richman, on the other hand, says that the Receiver has been tossing away money and failing to comply with lawful orders and has acted un-

don't know how a court can decide that by the charge of one against the other, or the

only thing a court can do is hear the evidence that we want to hear. But it is a salient point with regard to receiverships that receivers whatever they earn, if they do earn, should be fairly near to the close of their performance of their duties.

I want to hear it as soon as due process—I [8] the spirit, not just the letter—will allow me to get ready for it. When will that be? Bear in mind we are going to try these separately.

Well against Richman, so far as the argument that come up in that matter, as distinguished from the receivership matter, has been so proximate a matter and the main issues have been discovered—they involved hundreds of thousands of dollars—that this quarrel as to who gets what, on a relatively small amount in the Receiver's hands, we will just have to wait to where we can fit it into our calendar as we do ordinary litigation.

I would like to try the Receiver fees and his counsel's fees as soon as you feel that prudence and justice can bring it in court.

Enright: At the convenience of counsel and the court, I will be ready for trial within 20 days or so.

I want to comment, your Honor, though, on

ate that, your Honor. A contract was made filing this lawsuit in February 1953. There is no pleading before the court involving that contract as I see it.

The Court: But the money itself is before the court.

Mr. Enright: I appreciate that, but they admitted their rights in an original proceeding. They have authority to [9] support our position on this score. We can cross that bridge when we come to it.

We do have to try the Receiver's fees and the attorneys' fees before your Honor. I do not want it considered by anyone I am conceding the matter.

I will be ready for trial within 20 days, permitting the Receiver and his attorney can appear.

The Court: They want to be paid, I suppose, in the reasonably near future. The Receiver should make himself available for a deposition promptly.

Mr. Enright: If they can appear within the next ten days for their depositions, say, 15 days or 20 days after the taking of their depositions will be agreeable with me.

The Court: How long do you think it will take to try this question of Receivers' fees?

Mr. Enright: I will say not less than two weeks, your Honor.

The Court: Well, we like to think in terms of months, so that I know how to budget.

Enright: I would say the objecting party's
e would reasonably take two days to present.

Court: How about you, Mr. Camusi?

Camusi: I won't need any time on this. I
ne only questions involved are questions of
don't have any [10] argument with the ac-
g, except as it affects, really, a division after
ment to the Receiver and his attorney.

Court: Do I understand then the argument,
as you getting it in, is how the money shall
ded, which is left after the Receiver gets
l.

Enright: Yes. And, of course, I may want
ment on what I think reasonable fees are.
far being involved, we are not making any
that the Receiver hasn't done the job given

Court: I will set it for Tuesday, May 11th.
ives us 29 days from today. Tuesday, May
9:30. If we set it at that time maybe we can
ough that same week.

are you going to have an audit?

Enright: I am not going to have an audit
I am going to further examine the records
understand are being kept intact by the
ff at the Oliver Cromwell. So far as an audit
erned, we are not causing an audit to be pre-

manager. They will be available any time you to see them.

The Court: All right. Any party to the a that wants an audit made can have it made court will not have [11] an audit made fo court, unless there be some audit made by o the parties litigant or a party litigant ask court to appoint an auditor.

There is no answer to that question now. can write me a letter if you change your mind

Mr. Enright: I suppose Mr. Whyte and I agree among ourselves for deposition, without ing it a part of the record.

Mr. Whyte: I believe so, counsel.

The Court: Is there anything else then w do on this day?

The other matter, so far as I see it, is j question of how the funds are to be divided. I the impression here that it was settled by the s lation under which we proceeded, which led to tlement of the case, and with the letters and a ments which were entered into contemporane with the stipulation, satisfaction of judgment the dismissal.

If it is to be disposed of on some other basi can or we will have to have that brought i appropriate pleading.

Is there anything else we can do?

Mr. Camusi: I won't comment to the court?

Court: Oh, yes. Of course, you will have date set——

Camusi: Pretrial—— [12]

Court: Perhaps we ought to have a pre-trial.

Camusi: I think there is a little accounting involved and maybe it will result in stipulation of issues, and leave the trial more or less a matter of law.

Court: Let's set a pretrial on it then. We are going to try the Receiver's fee issue on Tuesday May 11th.

We are pretrying the other issue on Friday, May 14th.

Enright: Your Honor, I again point out that this court does not have jurisdiction of a contract made by Lyda Tidwell and Frederick Richman on February 25, 1953.

Camusi: Let's argue that at the pretrial.

Court: That would appear prima facie to

Camusi says, "Let's argue it." I am going to keep my mind open until we hear the argument. You are going to try and inject a contract of partnership in here, why, let me have a memorandum of understanding of the pretrial on May 14th. You might as well have one, anyway, advising the court of what issues are respecting the division of the money after the lawful charges upon it have been exhausted by payment of the fees. And you

If not, we will just have to have some framing of the issues by the pretrial process. [13]

Mr. Enright: That is on May 14th?

The Court: May 14th.

Mr. Enright: Yes, that is agreeable.

The Court: At 10:00 o'clock.

Mr. Enright: These memoranda now are to be concurrent?

The Court: They are not to be legal arguments. You shall point out what the issues are with respect to disposition of this money and simply state the point or points of law that are involved, with citations to authorities.

But I do not think either the situation or the money involved requires that it be briefed, particularly in advance of framing the issues.

Mr. Enright: The time, now,—

The Court: 10:00 o'clock.

Mr. Enright: On the 14th we will submit the memorandum then.

The Court: The memorandum five days before then.

Mr. Enright: Five days before?

The Court: Yes. We will try the Receiver's case on the preceding Tuesday. That is, the Tuesday preceding the day we are going to have the pretrial conference.

(Whereupon, at 11:35 o'clock a.m., Monday, April 12, 1954, an adjournment was taken.)

er additional facts that may not have been
either by the report of the Receiver or by
position.

Court: You both will have all the latitude
ed to develop pertinent evidence. However,
going to stick to the issues triable in this
ding. And this is not a proceeding to deter-
qualifications preliminary to [4] appointment.
o the Receiver's past employment, of course,
relevant upon the question of what capacity
ployment he has had in the past, because if
point a hundred-dollar-a-month clerk as a
r, he gets a different compensation and
a different quality of understanding to his
han if you appoint a hundred-thousand-dol-
ear bank president. It is important for that
e then not to determine whether the man
be appointed.

ve said before, but I think I will say again
e record of this proceeding today, that this
er did not ask for the appointment. The
ought him out on the court's own motion, the
dges of this division generally do. We dis-
having a list of people who want to be ap-
l receiver and prefer to generally make se-
s on our own knowledge or inquiry. * * * * *

Whyte: Is there no way we can get the
ion in evidence without reading it in its en-
as to make it a part of this

Mr. Whyte: That it be offered as an exhibit and I assume that that would require a settlement of the disputed objections and questions which are asked.

The Court: Some lawyers think it does and others think that it is sufficient to trust a jury to only consider the matters which are relevant and material.

Mr. Whyte: I am quite willing to do that, Your Honor; quite willing. * * * * *

Mr. Enright: My silence to be construed as acquiescence in anything that has been said.

First, the petition itself is the complaint, and at this moment I do not know what the Receiver seeks as to amount of compensation, in that he has failed to comply with Rule 18 (c) (4), which provides, "The notice shall show in what amount covering what period fees will be asked for."

Secondly, I view the objections filed in behalf of the defendant as an answer to the petition, and the petition and answer join issue. And I feel that the issue involving—I assume the Receiver desires an excess of \$4,000.00. It is indicated that he wants \$5,000.00. That that issue, involving that amount of money, should be tried in due course, that is, in the pleadings and the issues thereby created.

* * * * * [8]

Mr. Whyte: I am going to again renew my request that the deposition be introduced in evidence.

n having the Receiver again testify to matters which were covered in the deposition, which is covered in his report.

the purpose of shortening the proceedings, suggesting that the deposition be annexed and received in evidence as an exhibit to the Receiver's report and petition.

Court: Of course, depositions generally are available as a substitute for live testimony in court, if the witness is available.

There is an exception to that under what looks to be an anomalous thing in our civil rules, that a deposition of a party may be received into evidence, introduced by either party, and it will be admitted.

But the rule provides that, Mr. Enright. And that is not in keeping with legal tradition the way we were taught it in law school, of legal practice the way it is engaged in in the Superior Court, that I see any escape from receiving this deposition if it is offered. Do you? Any legal escape.

Enright: Well, there will be a motion to exclude [9] of the answers that were nonresponsive questions propounded. I will have to pursue the deposition with the usual manner in which one handles questions are propounded in court, and that remains in that deposition if it is received in evidence. I should be accorded that privilege.

Court: Yes. I would be glad to do so.

given which is in conflict with what was given in deposition, the deposition may be used either for memory refreshment or impeachment.

But let's have the direct evidence of Mr. Hallberg as it might be needed to supplement the report. The Court is agreeable to me to receive it as a portion of direct testimony.

You don't have to do that, Mr. Whyte, if you don't want to. That is what we think should be done.

Mr. Whyte: Pursuant to Rule 26, Federal Rules of Civil Procedure, I am going to offer the deposition of Mr. Hallberg in evidence.

The Court: It will be received as Received in evidence first in order.

Mr. Whyte: Thank you, your Honor. I am willing to—

Mr. Enright: Do you have another subject matter now, Mr. Whyte?

Mr. Whyte: I was going to say that I am willing to [10] submit the case in chief of Mr. Hallberg, the Receiver, upon the basis of his report and petition for fees, as filed with the court, together with his deposition which I have now offered in evidence in its entirety, and rest my case in evidence upon those two documents.

The Court: That is the report and the deposition?

Mr. Whyte: Yes.

The Court: Is there any objection to the case?

g. It is not even verified. I don't see how I quite accept that as a method of proof of

Court: You had better lay a foundation for its set forth for the report, as a report.

Whyte: I understood the court to suggest it, that the best method of doing this would be to submit the case in chief, the direct testimony, as the basis of the report.

Court: I did. I still think so, but your opponent doesn't. He says it is only a pleading. And I think technically he is correct. It is only a pleading unless the exhibits to it are received into evidence upon a proper foundation. Then that will make it an exhibit. Or unless the report itself be made to be the direct examination, the direct testimony of the Receiver, which has often been done in these courts by stipulation. That then opens up a wide vista of cross examination.

Whyte: Then I will ask Mr. Enright whether or not he will stipulate that the Receiver's affidavit and petition for fees, together with the Receiver's deposition, may constitute the direct testimony of the Receiver in this case, subject to his cross examination on all of the matters set forth in the documents.

Enright: Are you through?

Whyte: Yes.

Enright: Now concerning the two subject

ceived in evidence. So far as I know, I have not seen the original deposition yet.

Secondly, reserve for a motion to strike those portions of the deposition which were not even responsive to questions, if there are any. That takes up the deposition part.

I understand it has been received in evidence.

The Court: We will order that it be stricken from evidence for the purpose of your having an opportunity to examine it and to object. I only admitted it in evidence because of the Federal Rules which Mr. Whyte read. I don't think it is particularly helpful, to just take depositions as evidence.

Mr. Enright: Now, concerning the petition itself, it is [12] not verified. There are many statements in the petition that——

Mr. Whyte: I beg your pardon. The petition is not verified.

Mr. Enright: Pardon me, Mr. Whyte, if I am in error.

The Court: I was in the same error. I read the petition last night, but I read simply the court's working copy and that working copy did not show a verification.

Mr. Enright: I would say that it would appear as though it was verified, that is, the copy I read. But I fell into the same error, your Honor.

In any event, the statements made in the petition, being pages 1 to 14, as distinguished from the exhibits, are not testimony or ultimate facts.

ize a great many that are outside the usual of a receiver's report, such as recommendation for future handling of the property. Those things a receiver might make by way of suggestion to his successor.

I don't accept them here as probative on any act of the Receiver with respect to the conduct of his office, and I would not consider them that way.

If you want to excise those portions of it, that can be done. If you want to trust me to do it, I will look at it with a very critical eye.

Enright: I would have to take the position that [13] received in evidence it is received over objection.

Court: All right. There is another matter.

Whyte: Do I understand then, in response to my request for a stipulation, that the case in which the direct testimony of the Receiver be substituted upon his petition and report, and his deposition, that you are refusing to so stipulate?

Enright: I do so refuse.

Whyte: Thank you.

Enright: I have been served this morning with a supplemental petition for allowance of fees of Attorney and Receiver. I will check that during court recess. It was just handed to me a few minutes ago by Mr. Whyte.

Court: Then, Mr. Whyte, you will have to

ROY E. HALLBERG

called as a witness in his own behalf, having first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, please?

The Witness: Roy E. Hallberg.

Mr. Whyte: I wonder if I might have the original report and petition of the Receiver. My clerk does not have the verification upon it.

The Clerk: Yes, sir.

The Court: The court should note for the record here that when the Receiver was engaged in the preparation of his report either Mr. Hallberg or Mr. Whyte—I don't recall which one—called and said, "Do we have to set forth a particular amount or may we leave it to the discretion of the court and ask for a reasonable fee?"

I told them I would like for them to set forth in detail what had been done and if they wanted to leave it to the court to determine a reasonable amount that the court would not insist upon compliance with the rule that an amount shall [15] be prayed for. But they could leave it as reasonable or they would state a specific amount.

I was then told that Mr. Whyte felt he ought to put in a specific amount, which he did, and Mr. Hallberg preferred to leave his to a prayer for a reasonable amount.

mony of Roy E. Hallberg.)

202 Seaview, Corona del Mar.

You were appointed as the Receiver in this position or about December 1, 1953, were you not?

That is correct.

And you gave up your active duties of management and operation of the affairs of the former Trust as of February 28, 1954, did you

That is correct.

[I direct your attention to the original of a report entitled "First and Final Report of Receiver and Petition for Allowance of Fee to Receiver, and more particularly to the verification on the inside of the blue backer to which that report and petition is annexed, and I ask you whether or not that is your signature which appears on the back of the petition on the blue backer.

That is my signature.

Are you able to state for the court, with reference to each and all of the matters alleged on pages 1 to 14 of that petition and report, that everything exclusive of the exhibits, are each one of the matters therein alleged true, to the best of your knowledge?

Enright: To which objection is made upon the ground it would call for a conclusion of the witness, to state whether or not he or some agent or

(Testimony of Roy E. Hallberg.)

ther it is true, to the best of his knowledge and belief. That is a question often asked of people of executive capacity.

Objection overruled.

Mr. Enright: Would you read the question, Reporter? (The question was read.)

The Witness: They are all true, to the best of my knowledge.

The Court: Let's have a moment to ask a question. Now, the Receiver hasn't asked for any specific amount. He says he will take whatever is reasonable.

What do you think is reasonable, Mr. Enright? You have looked over the report. Your client himself had charge of these same properties over the course of some years and has made charges for services in connection with management.

Just what do you think would be a reasonable amount to [17] award this Receiver? There must not be any dispute here. You state it and we will ask him if that is acceptable to him.

Mr. Enright: Well, I can best answer the question this way: The man apparently was earning \$350 a month for his full time, at all times when he was acting as Receiver.

Apparently, he spent some week ends in rendering some services on this receivership. Had it been for his manner in rendering his services

ony of Roy E. Hallberg.)

ot for his unclean hands in making those
ntations, I would be inclined to compensate
his usual rate of compensation, which was
the past four years as follows:

orked for the Morgan Construction Tooth
y, where he received \$100.00 a week draw-
ount.

ates for about six or seven months in 1951
ted for Narmco—some manufacturer of fish-
s down here at Costa Mesa, where he re-
\$350.00 a month for about a year.

working now, as best I could find out, for
nty of Orange, and hadn't missed work for
nty of Orange when he was to be rendering
a personal services as Receiver. His com-
on for the County of Orange, as I under-
, is \$350.00, or \$355.00 a month. [18]

't know what the man feels he is entitled to
It places a burden on us, your Honor.

r as we are concerned, we found out later
partment houses are pretty much running
ves, and I am satisfied the evidence will
at.

for me to sit here and judge what we should
this man, who came into this receivership
ted by your Honor—I mean at your Honor's
ion, as I understand it from your state-
is making your Honor

(Testimony of Roy E. Hallberg.)

He wanted to know what it would involve, and I told him in a general way what it would be.

I made the call because, although my acquaintance with him has not been personally very extensive, I have known him casually and was a neighbor of his, and I have known of properties that I thought he was managing for an aged relative. It turns out from the deposition that it was his property.

I had known from just casual conversation that he had had a responsible part in the management of considerable income property in Chicago. I thought for a term of years. And it turns out that it was just a little over one year, if the deposition is right.

Knowing that Mr. Richman had carried on such ventures [19] while he managed these properties, I thought that while it would be part time, it would be a substantial part-time employment, and having confidence in the man's integrity and ability, I asked him if he would serve and he said he would.

Mr. Enright: I fully appreciate the situation before your Honor, so far as your Honor is concerned. I judge of this court. I hope you, in turn, will appreciate the position I am in here.

Now, the man says he managed property. As the deposition shows, and I am sure it is the fact, at least, I have the county records, County Recorder's Office checked, and I can produce the records.

mony of Roy E. Hallberg.)

ce records. That is the extent of his management of properties anywhere comparable to——

Court: What about the 400-unit apartments in Chicago?

Enright: Concerning those in the year of 1931 according to his own testimony in his deposition he was employed, not by a receiver, as we had to believe he was employed by a receiver, rather, the owner of bonds issued by a bank, and then by virtue of those bonds—I can't locate the man's name—he took over some properties. And presently Mr. Hallberg worked for him for about a year in 1931 in Chicago, in collecting rents. That is [20] different than managing property in Los Angeles in the year 1954 as a property manager. Certainly is completely foreign to what was presented to us as to the qualifications and experience of this Receiver.

Court: Before he was appointed I asked counsel in and made Mr. Hallberg available to them and invited them to ask questions, and if there were any questions about the qualification of the Receiver to serve, the court would appreciate the questions being asked before the service was rendered, rather than at the completion of it.

However, no questions were asked then. Of course I appreciate counsel didn't know him, but it was open. They could have asked them

(Testimony of Roy E. Hallberg.)

trial in another court. I came to this court at
in the afternoon. I advised the court I relied
the court's investigation of the proposed receiver,
that the court being satisfied with his integrity,
the receiver—and then making the representation
to the court and to myself of his experience,
not interrogate him and I do not feel that was
bound by his, shall I say, improper statement
made on that day, which are as follows, at page

“The Court: Just have a chair, Mr. Hallberg.”

“The court has now given its decision in this
matter, which I discussed with you last week.
I have asked counsel if there is any objection.
Of course, the defendant feels no doubt that he should
have won the case, but since a receiver is
appointed—whether they have any objection to
as the selection of the court as receiver.

“Now, they haven't announced any objection,
but they don't know you. I have explained to you
that you have had experience in this type of thing
in Chicago, that your main vocation for some years
was in the management of real properties, sometimes
times in connection with court receiverships,
that your experience in it locally has been in the
management of your own real properties, which
were of income nature, and of similar properties
owned by either your or your wife's relatives.”

“Mr. Hallberg: That is correct.”

mony of Roy E. Hallberg.)

ing a person experienced to manage and op-

further point is this: Certainly, all parties
stood this man was going to be the receiver in
well as in name. He went to work for the
r or Orange instead of being receiver. [22]

much we should compensate him I don't
I would like to hear the man say what he
e is entitled to for his week ends or his trips
e.

Court: We had beter take full evidence on
e did.

Whyte: Shall I proceed, your Honor?

Court: Yes.

(By Mr. Whyte): Again directing your at-
tention to pages 1 to 14 of your "First and Final
Petition for Allowance of Fees to Re-
ceive, as to each and all of the matters therein
mentioned, exclusive of those which were alleged on
information and belief, would you now testify
from the stand, under oath, subject to cross ex-
amination, that each and all of those matters are
to your own personal knowledge?

To the best of my knowledge each and every
statement there is true.

And as to each and all matters therein al-
leged on these 18 pages which were stated to be true

(Testimony of Roy E. Hallberg.)

those matters are true according to your best information and belief? A. Yes.

Q. Now, calling your attention to the schedules or exhibits which are attached to your "First Final Report and Petition for Allowance of Fees as Receiver" filed herein on March 18, 1954, and directing your attention first to Schedule A, will you tell us by whom that Schedule was prepared, please?

A. This Schedule was originally prepared by Mr. Richman and presented to me, copy of which I signed at the time I received the various documents pertaining to all these apartments, the various deeds, insurance policies, promissory notes, books of account, records, all current.

Q. Are you able to state, Mr. Hallberg, whether in your capacity as Receiver of all the real and personal property constituting the former Richman Trust you received from Mr. Richman, the former trustee, each and all of the assets, properties, documents, books, records, et cetera, which are set forth on Schedule A annexed to your report and petition?

A. I received all these insofar as I was able to check the individual items in about 12 or 14 cases and also in the files; naturally, it would have taken months to go through every sheet that was there.

However, I did receive some additional information sometime in January on some particular controversy that was not given to me originally.

mony of Roy E. Hallberg.)

including February 28, 1954, you received and all of the assets, properties, books, records and et cetera, set forth on that Schedule?

I believe I did.

You employed a bookkeeper in the course of operations as Receiver of the real and personal property constituting the former Richman did you not? A. I did.

What was the name of the bookkeeper originally employed by you? A. Mr. Harrison.

Did you find it necessary or desirable to discontinue Mr. Harrison from his position at some time during the course of your receivership? A. I did.

Did you take any steps toward hiring someone to replace Mr. Harrison as your bookkeeper? I did.

Whom did you employ?

A Miss Findeisen.

May I inquire whether Miss Findeisen prepared this Schedule A, which is annexed to your report?

I believe that part of this was prepared by Miss Findeisen and the balance by Miss Cosgrove, Roy E. Hallberg.

What position was Mrs. Hallberg or Miss Cosgrove—by the way, are they one and the same person?

They are one and the same. Miss Cosgrove is

(Testimony of Roy E. Hallberg.)

Mr. Enright: I will object on the ground it would be a conclusion for him to state.

The Court: Well, he was supposedly in charge of the receivership insofar as the receiver even though the court being ultimately in charge.

I think he can state the part that the several employees had in the setup. What she actually did she will have to tell. But he can tell what her position was.

The Witness: She was assisting me in a lot of the details connected with the operation of the buildings; because of her background and training she was quite effective in her handling of decorating, purchasing of materials, and overseeing the operations of the actual refurbishing of some of these apartments.

Mr. Enright: I move to strike the answer on the ground the answer is not responsive.

Secondly, on the ground the answer contains conclusions as to effectiveness and other similar to

The Court: Well, the answer does contain a bit of [26] conclusion. If it were allowed to stand I would consider it a statement of a reason why she was employed her, rather than what she accomplished.

Do you want it stricken, counsel?

We will strike the answer. Read the question. And we will ask for an answer of the question.

(The question was read.)

The Witness: She represented me in a good

mony of Roy E. Hallberg.)

By Mr. Whyte): Are you familiar with the which were performed by Mrs. Hallberg in ion with this receivership?

I definitely am.

What duties, in general, did she perform?

She performed various duties. Among them erseeing the decorating of a lot of these apart- the combining of color schemes to make the ents more desirable, and the selection of a lot erials that were used in draperies, in uphol- ; all with one idea in mind, of getting the possibly could for the least amount of money.

Court: We will suspend now until 2:00. We cess until that time.

Whereupon, at 12:00 o'clock noon, a recess taken until 2:00 o'clock p.m. of the same day.)

geles, Wednesday, May 12, 1954, 2:00 p.m.

Court: Knowing the bailiff would be away, im to arrange for a bailiff. I thought he had .

Enright: May it please the court, this morn- court inquired of counsel for Defendant Rich- to what he would consider as a reasonable fee. ng the noontime I have further considered. not prepared to answer this morning, other e manner in which I did. And during the

(Testimony of Roy E. Hallberg.)

bookkeeping expenses incurred by the Receiver, the salaries of Mr. Harrison and Miss Find. It is less than \$1,700.00 from the Receiver's report whatever that figure is exactly.

Secondly, that the fee due to the defendant man for his services in the month of November listed as a payable or obligation of the trust paid to the defendant.

Thirdly, that the court hold that there should be added to the fund reported by the Receiver the following items:

A. \$785.00 petty cash, which the Receiver's report shows as being within his control as of February 28, 1945, the date of the termination of active duty in accordance with the order of the court dated February 26, 1954, which [28] directed the Receiver to retain in his control moneys in the bank and moneys under his control.

B. The February 26th, 27th, and 28th collections of rents, which were collected by the managers which were turned over to the plaintiff Lyda Hallwell's agents, particularly, according to the deposition of Mr. Hallberg, Mr. Udall. The report should be approximately \$2,000.00, the report of the Receiver. We think it is approximately \$900.00. It could be subject to accounting, whatever the amount was, which I think can be ascertained.

C. That there be added to the fund of the trust

mony of Roy E. Hallberg.)

tain sums of money that are subject to settlement between the plaintiff and the defendant, so as the receiver reports the sum of money as on hand; it is of no consequence it be physically on hand. But merely that it is reported as a part of the accounting, that those moneys were there. As to who they are chargeable to, I think that is for the plaintiff and defendant to settle. The contract, I am sure, is quite clear, they are payable to the plaintiff. But that is another matter. That is the second issue we have reserved that we are going to submit at pretrial. [29]

Court: Your statement, Mr. Enright, brings in an offer, if it is an offer, matters which are involved in the dispute between plaintiff and defendant, so involved that I think we had better get on ahead and take the evidence.

Enright: Well, these items will involve matters that are in the accounting.

Whyte: Mr. Hallberg, will you resume the examination, please?

ROY E. HALLBERG

As a witness in his own behalf, having been lawfully duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Whyte: Miss Reporter, will you kindly read

(Testimony of Roy E. Hallberg.)

A. She made periodic trips every other practically, to the various apartments and picked up the moneys that were on hand and collected from the managers.

Q. What did she do with those moneys?

A. She brought those moneys into the office and made recordings of them and credited it to the proper buildings and deposit was made up and placed in the bank. [30]

Q. In what bank was that, Mr. Hallberg?

A. That was the bank over at Western Third, I believe.

Q. Did you maintain an account there as receiver of the assets of the former Richman trust?

A. I did.

Q. What, if anything, did Mrs. Hallberg do with reference to the bookkeeping?

A. She assisted Miss Findeisen in some of the bookkeeping work.

Q. Did she ever assist Mr. Harrison during the time that he was the bookkeeper for the estate?

A. I believe she did on one or two occasions.

Q. Did Mrs. Hallberg have anything to do with the purchasing of supplies for the various apartment houses?

A. She most certainly did, especially when the supplies were items that tended to enhance the appearance of the apartments.

Mr. Enright: I will move to strike the

mony of Roy E. Hallberg.)

Court: Motion granted.

(By Mr. Whyte): What compensation, if did Mrs. Hallberg receive from the receiver-tate for the services which you have detailed?

She has not received anything. [31]

Was she subject to your direction and control in the performance of those duties?

She most certainly was.

Were Mr. Harrison, the original bookkeeper, and his successor, Miss Findeisen, subject to your direction and control in connection with the performance of their bookkeeping duties?

They certainly were.

By the way, Mr. Hallberg, do you happen to know whether your wife is a college graduate?

She is a graduate of the University of Min-

What business training, if any, did she have before she married you or the early years of her marriage?

She was with Payne-Weiner, a brokerage firm. She was one of two investment counselors, and two women counselors in New York.

One of two women investment counselors?

That is right. And her school training was in business administration.

(Testimony of Roy E. Hallberg.)

A. She holds a real estate broker's license in State of California.

Q. You have stated that Mrs. Hallberg received no compensation for the services she performed in connection with [32] the receivership. What compensation, if any, did Mr. Harrison and Miss Findeisen receive for their bookkeeping duties?

A. Mr. Harrison received \$450.00 a month. Miss Findeisen \$300.00 a month.

Q. For how long, approximately, did Mr. Harrison serve as your bookkeeper?

A. About two months, approximately.

Q. And Miss Findeisen served for how long?

A. The balance of the term.

The Court: Were they same positions, that is, did the lady succeed Mr. Harrison or did she do a different type of work?

The Witness: She succeeded Mr. Harrison and did the same work.

Q. (By Mr. Whyte): Was that a full time bookkeeping job? A. It was.

Q. Drawing your attention again to Schedule A annexed to your "First and Final Report and Petition for Allowance of Fees", I believe you stated on your direct examination before the noon recess that this Schedule was prepared by Miss Findeisen and Mrs. Hallberg, is that correct?

A. That is correct.

Q. Do you know of your own personal knowledge

mony of Roy E. Hallberg.)

Enright: Just a minute. May I have your art——

Whyte: If I may withdraw the question, I came it again in a clear enough tone of voice will all understand it.

(By Mr. Whyte): Drawing your attention to Schedule A annexed to your Report and Petitioner Fees, the Schedule is headed "Inventory of Known Assets and Properties Constituting of the Former Richman Trust Over Which Receiver Assumed Possession, Custody and/or Control", my question to you is, did you receive Mr. Richman receipts showing the assets and liabilities of the former Richman trust which he transferred to your possession, custody and/or control?

He listed all these, all the items that he gave to me, and I signed a receipt for them. They were included with the exception, as I believe mentioned before, that the file that pertained to the carpet controversy with the City Building Department at one of the buildings, that was received some time in January. In other words, I did not have all of the files, apparently, at the time I took over the buildings, or the management of these buildings.

Speaking now only of the receipt which you

(Testimony of Roy E. Hallberg.)

tion of the Parapet file you have referred to, indexed on those receipts?

A. Yes. The files consisted of various and dry papers, and there were any number of there. I did not go through each individual file to see whether it pertained to that particular heading that was on the file.

However, I assumed they were, inasmuch as I had taken them right out of his file there and out of his own records, that they did pertain to the buildings. But actually this was all information regarding earlier transactions.

Q. Were those receipts prepared in Mr. Richman's office, if you know?

A. The original receipt was prepared in Mr. Richman's office, and I signed it.

Q. Did you check the properties and amounts turned over to you against the receipts, to determine whether or not you received all of the amounts and properties shown on the receipts?

A. As far as I could, I did, yes.

Q. Is it your testimony that the only item which you received that is not shown on the receipt is the file with reference to the Parapet at the Olin Cromwell?

A. That is the Canterbury.

Q. The Canterbury? [35]

A. That is right, that was the only one.

Q. Now, are you able to state whether or not this Schedule A appeared to your report and

mony of Roy E. Hallberg.)

of the receipts furnished you by Mr. Rich-

A. They were, definitely.

You say they were. You mean——

Schedule A was prepared from the original which I signed and checked as far as I could, turned over to the subsequent management.

When you say the original file that you do you refer to the original receipts which I signed?

The original receipts which I filed, yes—I signed.

Thank you. Directing your attention further to Exhibit B, or, rather, Schedules B, C, and D and to your Report and Petition for Allowance of Fees, first directing specific attention to Schedule B, which is headed "Schedule of Receipts and Disbursements of Roy E. Hallberg, as Receiver of the Assets of the Former Richman Trust from October 1, 1953, to and including February 28, 1954," to that Schedule is attached several exhibits, Exhibit I, Exhibit II, Exhibit III and Exhibit IV.

Are you able to tell us who prepared that Sched-

[36]

That was prepared by Mrs. Hallberg and was taken from the books and records which were in the office.

Will you briefly describe what these books

(Testimony of Roy E. Hallberg.)

Q. Did you have a journal of any kind?

A. There was a journal there that had kept up, yes.

Q. Did you continue to keep up a journal during your period of——

A. Kept a journal up to the end of the year, we wouldn't be breaking the accounting record for the calendar year.

Beginning January 1st we changed the system a little bit, so that we could more adequately make comparisons.

Q. Then what did the books and records of the receivership consist of after January 1, 1954?

A. Well, it consisted of a cash receipts and disbursements book and the general ledger.

Q. Were you the custodian of those records, that is to say, were they kept in your possession and under your control? A. They were.

Q. Were those records kept in the regular course of the business of the receivership? [37]

A. They were.

Q. Were the entries made in the ledger and cash receipts and disbursement books made substantially the same, at substantially the same time as the transactions which they purported to represent?

A. They were up to a point. After the first of the year Mr. Harrison began making entries on working sheets and was not transferring the entries into the ledger, which he had not succeeded in

mony of Roy E. Hallberg.)

to use working sheets and pencil notations, I changed when we—when Mr. Harrison was ated, when his work with us was terminated, within a short period we got everything in and brought it up to date.

About when were the entries made by Mr. on, on the work sheets you have mentioned, rred to the original books of account?

In February.

1954? A. Correct.

Calling your attention now to Schedule C at- to your Report and Petition, which Schedule ed “Disbursements Made by the Receiver as ed by the Court Covering Liabilities Incurred to February 28, 1954, but Not Paid Until That Date”, who prepared that [38] Sched- you know?

Mrs. Hallberg and Miss Findeisen.

Was that Schedule also prepared on the basis books of account kept by the receivership? Books of account, the invoices that came in cords that we had there in the office.

With reference to this caption on Schedule C, rsements Made by the Receiver Covering ties Incurred Prior to February 28, 1954, but aid Until After That Date”, why were the isted on this Schedule not paid until after
— 22 — 1954

(Testimony of Roy E. Hallberg.)

moneys we had on hand after a discussion with and Judge Tolin, and they were later paid.

Q. Is it a fact that the items listed on Schedule C are items reflecting materials delivered and services rendered to the receivership on or before February 28, 1954? A. They are.

Q. Now, with reference to the phrase in the title to the Schedule, "As Directed by the Court," did you have any conversation with the court regarding the payment of those items?

A. I did. [39]

Q. Will you please state when that conversation took place?

A. That conversation took place either the day following the termination of the receivership or the week following. I believe it was on the Sunday following the 28th of February.

Q. Perhaps I can refresh your recollection, Mr. Hallberg. Do you recall that I came down to see you and Mrs. Hallberg at Corona Del Mar on the Sunday of golf at your home? A. Yes.

Q. Do you recall that I visited you there on Sunday, March 7th?

A. Yes, Sunday, March 7th, because you were there at the time I talked to the Judge.

Q. This conversation you had with the Judge was that in person or over the telephone?

A. It was over the telephone.

Q. Please state what was said with reference

mony of Roy E. Hallberg.)

edness incurred during the month of February and which I felt I was personally responsible phoned Judge Tolin and asked him whether I should go ahead and pay these bills with the cash I had on hand. He so advised me.

When you say "he so advised me", did he advise you [40] to pay them?

He advised me to pay them.

Now, directing your attention to Schedule D attached to your Report and Petition, which is headed, "List of all Known Creditors of the Former Trust with Names, Addresses and Amounts of Claims, including both Specific and Unsecured Claims, as of March 10, 1954," who, if any, prepared that Schedule?

Mrs. Hallberg and Miss Findeisen.

Was that Schedule also prepared on the basis of the entries made in the original books of account kept by the Receiver?

I do not—Inasmuch as we were operating the books on a cash basis, I do not believe they were reflected in the records. The only time they get into the record is when you pick them up as an account and pay them by cash.

Whyte: At this time, having laid the foundation, I believe, for the admission in evidence of the First and Final Report of Receiver and Peti-

(Testimony of Roy E. Hallberg.)

the first 14 pages of pleading. There is no objection made to the Schedules themselves, itemization.

The Court: The Schedules will be received. The first [41] pages being largely pleading matters, I think we had better not receive them.

Mr. Whyte: May I address the court for a moment in that connection?

The Court: Yes.

Mr. Whyte: I believe the witness has testified that each and all of the matters alleged in the first 14 pages, except as to those matters on information and belief, about which he testified separately, are true, and that he was now able to testify here on the witness stand, under oath and subject to cross examination, that each and all of those matters set forth are true as of his own knowledge.

He has further testified that each and all of the matters set forth in that Report and Petition on information and belief, that he is willing to swear today on the witness stand, under oath, subject to cross examination, are true according to his information and belief.

It seems to me that that furnishes a foundation for the admission in evidence of everything mentioned in the Report. Otherwise, I would have asked him about each individual item separately.

The Court: I think it does. Of course, it contains many things which are semi-argumentative.

mony of Roy E. Hallberg.)

will reverse myself, Mr. Enright. I think the thing is admissible. It will be received.

Whyte: Thank you, your Honor. I should like to ask some questions concerning the number of individual apartments and the range of rentals of the five apartment houses which form the principal part of the assets of the former Richman Trust.

(By Mr. Whyte): First, with reference to the Canterbury Apartment Hotel, located in Hollywood, California, are you able to state how many individual apartments were contained in that apartment-hotel?

May I look at a note I have?

Surely, you may refresh your recollection.

The first one is the Canterbury.

That is true.

90 apartments. They range from \$65.00 to \$100.00.

By that you mean that the lowest apartment, the lowest-priced apartment at the Canterbury rents for \$65.00 and the highest-priced apartment rents for \$100.00?

A. That is correct.

Next, with reference to the Fountain Manor Apartment Hotel, located in Los Angeles, California, are you able to state how many individual apartments are contained in that building?

(Testimony of Roy E. Hallberg.)

ern Arms and the LaLoma Apartment Hotel located in Los Angeles, California?

A. The Oliver Cromwell has 94 and their range from \$45.00 to approximately \$115.00.

The Western Arms, 76 apartments, and approximate range is from \$50.00 to \$95.00.

LaLoma, 55 apartments, with the approximate range of \$45.00 to \$57.57.

Q. As to each of the five apartment houses, your testimony that those rental ranges which have mentioned are approximate figures?

A. Yes, because—Well, they are.

Q. Mr. Hallberg, during your tenure of as Receiver, did each of the five apartment buildings have a separate resident manager?

A. They did.

Q. What compensation, if any, did those separate resident managers receive from the trust estate?

A. They were paid a salary plus an apartment.

Q. Were those managers subject to your direction and control as Receiver of the properties constituting the former Richman trust?

A. They were. [44]

The Court: How were they paid? Of course Hallberg don't know how those managers paid prior to the trust.

Did the trust bear the expense or did that

mony of Roy E. Hallberg.)

identical arrangement as carried on by the
er; no change at all by the Receiver.

Court: Thank you.

(By Mr. Whyte): During your tenure of
s Receiver were you responsible for the em-
nt of personnel and their discharge, if that
necessary? A. I was.

Did you find it necessary on any occasion to
ge an agent or employee of the receiver-

A. Yes, I discharged Mr. Harrison.

During the course of your tenure of office
eiver, were you charged with the duty of
ng the accumulation of moneys from the re-
hip properties to meet substantial current
ions, such as taxes or insurance?

I took over the properties, and there was
ion whether or not we would be able to meet
payment that had to be made in December.
ceeded in meeting the payment, and although
us very short for operating moneys, we man-
o carry on. [45]

Did you then plan the accumulation of
s from the receivership in the form of rents
hese apartment houses or other properties in
way as to meet current obligations of the
rship as they became due?

As much as we were a little short on cash,

(Testimony of Roy E. Hallberg.)

A. Well, insurance policies that were in were allowed to continue. When a policy expired I placed the insurance with a company who offered a lower rate by 10 per cent over the standard rate plus a dividend of approximately 25 per cent, which would be rebated or the dividends would be paid to the receivership or the trust at the expiration of those policies.

Q. What type of an insurance policy was this, Mr. Hallberg?

A. Those are fire insurance policies.

Q. Did you negotiate a new fire insurance policy with this company you have mentioned on a basis of the apartment buildings in the trust estate?

A. No, sir, I placed it with the LaLoma and the Oliver Cromwell.

Q. What, if anything, did you do with reference to the compensation insurance policies covering the respective [46] apartment buildings?

A. The policy had, or the—yes, the policy had been issued and a payment made. I stopped the payment on the check with the full knowledge of the full knowledge of the insurance broker, because it included some items that were Mr. Rich's personal items; we rewrote it.

Q. What items were those?

A. Oh, I think there was an automobile connected with it and some servants.

mony of Roy E. Hallberg.)

policy covering one or more of these five apartment buildings at the time you took over this partnership?

Those items had to be taken out and we re-wrote the policy, and it was placed with the same

When you say "placed with the same broker" that you mean a new policy was written with the same company and broker as——

That is correct.

——previously? A. That is correct.

As to each of these questions I am directing you, regarding what you did in connection with the partnership, are you answering as to something you did in person, [47] Mr. Hallberg, and not through an agent?

What are you referring to?

For instance, when I have asked you about insurance negotiations that you had, did you handle them personally?

Yes, I did that personally.

Now, did you inspect the five apartment buildings from time to time, to determine if their heating plants were in good working order?

I certainly did inspect them, and as far as I could ascertain, I checked the physical property.

When you say you checked the physical property, what do you mean? Did you look at the

(Testimony of Roy E. Hallberg.)

Q. Did you look at the water heaters?

A. Looked at the water heaters, yes.

Q. Did you look at the basements?

A. I certainly did.

Q. Did you examine any of the vacant apartments to see if—

A. I certainly did. I visited many a vacant apartment.

Q. You did that with reference to all five of the apartment houses?

A. I was in vacant apartments in all five buildings. [48]

Q. Did you examine the boilers, the refrigeration systems, the heaters and the basements in the five apartment buildings?

A. I certainly did.

Q. What, if anything, did you do with reference to the repair of refrigeration equipment at the Western Arms?

A. Western Arms, about the middle of January—I am not positive of the exact date at this time—they had a box that refused to operate, turned over to me. The manager, as she had been instructed, called the California Refrigeration Company. The California Refrigeration Company had been handling the other apartment buildings for quite some time prior to my taking over, and they went to work on it and they worked all day.

imony of Roy E. Hallberg.)

. Enright: May it please the court, I assume witness——

(By Mr. Whyte): I am asking for what you Mr. Hallberg.

e Court: Yes. We can't take from you what Hallberg said.

. Enright: I assume that the witness has so testified what he actually did or saw. If not, I prefer that his testimony be stricken.

(By Mr. Whyte): Proceed, Mr. Hallberg, confine [49] yourself to what you did or saw nally.

The report came in to me that evening that ere having difficulty with that building. I was hat the refrigeration people were on the job.

e following morning I found that they had l the gas out of the refrigeration system. It flooded system. Why they let all the gas out ll, that is really a question.

seems to be a difference of opinion as to the ctive merits of emptying all the gas out, al- h some companies will pump the gas into a ver and retain it and let it back into the sys- again.

ound out that the men who were repairing it hoked off or had cut out about eight boxes e they finally had the entire system down. And e found out that the manager of the building

(Testimony of Roy E. Hallberg.)

I got that information the following morning. And the manager of that apartment building, called in another refrigeration company, to come and see what could be done.

In the meantime the original company, Canine, had given us an estimate of approximately \$900.00 to repair the system, without giving any guaranty. The other firm said they could get it and could get this in working order at a [50] good lower cost, and I gave them instructions to go ahead.

The first company wanted to do, wanted to know what to do, and I had a conference with both of them, with both refrigeration companies, and with the second one, whose name I believe is the Mandie Refrigeration Company, to go ahead and finish the job at a considerably lower figure, without having the system tied up for the length of time the first company said they would have it. They would have to have it tied up.

Q. On this matter of your inspection of the boilers, the refrigeration system, the water heaters, and the basements, physical plants, vacant apartment buildings at these different apartment buildings, are you familiar with the workings of that type of physical plant from any previous experience that you had had? A. Oh, yes.

Q. Will you state what experience had qualified you to

be in the position of the operation of that

mony of Roy E. Hallberg.)

when we were operating a receivership, had
s, heating plants, hot water boilers, and I
I had a fair working knowledge of the plants.

Are the buildings which you operated in Chi-
[51] that you have just averted to, are those
buildings in connection with the receivership in
of a particular bank in Chicago, which you
ed to in your deposition?

That is correct.

Did you do anything about changing the ac-
ing system which had been established and
ained under Mr. Richman's regime?

Yes, I did. I tried to set up a system whereby
ould have direct comparisons, one building
st the other, for a period of months, and also
reference of your checks, so that they could
ced very quickly through your records, book
ls, and the name of the account to whom you
or the account to whom the checks were is-

was a little confusing to try to locate bills
have been paid prior to December 1st in the
ed they were kept. The bills were supposedly
ed together for a given building, but often-
a service was rendered to two or three build-
and if you wanted to find out which building
you tried to find a bill for a given building,
happened to be in connection with the one

(Testimony of Roy E. Hallberg.)

and we set up a record system which I think quite adequate and simple, and gave a lot of information, without an awful lot [52] of record, if I may call it that in the record.

Q. Can you be a trifle more specific on that point: Is it the fact that under the accounting system kept by Mr. Richman that the profit and loss of the entire five apartment buildings was reflected as a whole only, or were you able to tell from the accounts kept by Mr. Richman what was the profit and loss from each individual apartment building?

A. It would take quite a bit of work to get that information out. You would have to analyze the accounts first.

Q. When you changed the accounting system to the manner you have described, was it possible to tell easily and quickly what profit or what loss had been sustained from each individual apartment building?

A. Yes, with one exception. There was a question as to whether certain expenditures, which had been carried into the improvement account, should have been classed as improvements. I know what was done, but from purely—from a truly accounting standpoint some of the expenditures were put into the improvement account, which I personally do not believe should have been placed in that account.

mony of Roy E. Hallberg.)

it and loss, because some of the expenditures printing and things like [53] that definitely, in opinion, were expense and should not have been capitalized.

Then can you briefly summarize for us, in a few words, the advantages which accrued from your new system of bookkeeping instituted under your new Receiver, as compared with the system of bookkeeping you found when you took office?

What were the advantages that were obtained from the change in accounting you instituted?

Well, I believe that with my system—of bookkeeping in two months you are not going to be able to tell much, but over a period of time these records would have reflected a comparative month-by-month report of the operation of this individual company.

Finally, what you want records for is to be able to tell whether you are making money on the industrial buildings, to see whether or not it is economically feasible or sound, to see from an economic point of view you are working in the right direction, so you are making money.

Did you instruct the bookkeepers, Mr. Harrison and Miss Findeisen, in regard to the method of setting up the new accounting system?

I had a little difficulty getting Mr. Harrison to show this should have been handled. If

(Testimony of Roy E. Hallberg.)

Q. Mr. Hallberg,—— A. Pardon me.

Q. ——We want to keep this responsive.

A. All right.

Q. My question was, did you instruct Mr. Larson and his successor, Miss Findeisen, in the matter of setting up and maintaining this new bookkeeping system, which you have mentioned?

A. I did.

Q. During the course of the receivership, did you personally ever assist actively in the bookkeeping duties? A. I did.

Q. What training and experience had you with regard to bookkeeping?

A. Well, I worked for J. L. Maulpey when I was going to school, doing public accounting.

Q. What did you major in at college?

A. I was in the school of business administration.

Q. At what school?

A. Northwestern University.

Q. What degree did you receive there?

A. Bachelor of Science and Commerce.

Q. What year did you receive that?

A. 1927.

Q. During this course of receivership in Chicago you [55] mentioned, did you have anything to do with the books governing the operation of the various properties in that receivership?

mony of Roy E. Hallberg.)

l records, and had a full time bookkeeper carried it on.

Whyte: In order that the record may be te, I think this is as good a time as any to n evidence the whole of Mr. Hallberg's dep-, pursuant to Rule 26 of the Federal Rules il Procedure. I so offer the entire deposition lence at this time.

Court: Have you had a chance to look at it?

Enright: No, I did not have a chance dur-e noon recess. I understood it was offered subject to my making a motion as soon as I chance to examine it.

Court: You wish to have an opportunity to further before the court rules on the offer?

Enright: Yes, I would, your Honor.

Court: All right. We will take the offer of oposition under submission.

Whyte: Thank you, your Honor. May I hat I will be through with Mr. Hallberg's examination shortly.

uld like, if possible, to put on an expert wit-s to the reasonable value of his services, who e in the courtroom, if Mr. Richman would his cross examination [56] of Mr. Hallberg, fter the expert has testified.

Enright: Yes.

Whyte: Would that be convenient Mr. En

(Testimony of Roy E. Hallberg.)

purpose of having the foundation in the evidence for the testimony of the expert witness who will put on a few minutes, as to the reasonable value of the services.

I would like, if possible, to have that deposition in subject to whatever motion to strike the court may wish to entertain.

The Court: Under these circumstances, we know this Rule 26 will make some part of the deposition proper, and probably all of it; I don't know.

So it will be admitted subject to a motion to strike. By motion to strike, we can then weed out the extraneous parts of it.

Mr. Whyte: Thank you.

Q. (By Mr. Whyte): Did you petition this court for authority to pay Christmas bonus to the employees of the former Richman trust?

A. I did.

Q. Was that petition granted?

A. It was. [57]

Q. Did you distribute bonus checks to them? Now, when I say "you"—Did your bookkeeper distribute bonus checks to those employees pursuant to the granting of that petition?

A. They were distributed, yes.

Q. Did you also petition this court for authority to renovate individual apartments in each

mony of Roy E. Hallberg.)

aring of that petition and testify from the
stand? A. I did.

Was that petition for authority to renovate
ual apartments granted? A. It was.

Pursuant to the granting of that petition,
u personally carry out a program of limited
tion? A. I did.

Will you tell us what you did in that re-

Enright: I assume the question is what he
rsonally?

Whyte: That is right.

Witness: I directed that certain of the va-
partments that were pretty well worn, shall
be redecorated—not along the lines they had
ainted— [58] but to make them a little bit
colorful, and to repair some of the broken
n some of the buildings. We had a lobby
ad to be painted, and matters similar to that.
(By Mr. Whyte): Did you ever check the
in the neighborhood of any of these apart-
buildings? A. I did.

In what particular neighborhoods did you
a check of comparative rentals?

Out around the Western Arms and the Oliver
vell. Also up at the Fountain Manor.

Please tell the court what you personally did

(Testimony of Roy E. Hallberg.)

about two blocks south, maybe a long block south.
And there is a building directly behind it, and I
went in there and checked the rentals there.

Q. All right. Tell us what you did with regard
to checking the rentals in the neighborhood of
Oliver Cromwell.

A. I went into buildings on the street and on
street behind, both near to Wilshire and north of
the building, on streets adjacent to Normandy.

Q. When you say you went in those buildings,
did you ascertain what rents were being charged
at those locations?

A. That is right. [53]

Q. Please tell us what you personally did
regard to appraising the rentals in the neighbor-
hood of the Fountain Manor.

A. I went in one building south there. I
directed Mrs. Hallberg to check some of the ones
in the area. And we got a fair idea of that location.

Q. Did you do anything in regard to the
returns to be filed by the receivership estate?

A. Yes. That is the fiduciary return.

Q. Please tell us what you did in that con-
nection toward preparing and filing that return.

Mr. Enright: To which objection is made on
ground the return is the best evidence. Apparently
there is some uncertainty whether the return is
available any more.

The Court: What he did with respect to pre-

mony of Roy E. Hallberg.)

nt of Internal Revenue. Miss Brun was con-
who is in charge of the particular depart-
and she made the suggestion that the return
ried out along the manner of previous re-
that was done.

(By Mr. Whyte): Directing your attention
chedule B attached to your Report and Peti-
or Fees, can you point out to us on this
le whether it reflects the total or gross re-
received from receivership properties [60]
the three-month period of your receiver-

Inasmuch as these—as the buildings are op-
on a cash basis, the total receipts here are
ounts of money we received.

On page 2 of Schedule B there is a notation,
Receipts for Period from December 1953
including February 28, 1954". And following
here is a breakdown for the Canterbury,
in Manor, LaLoma, Oliver Cromwell, West-
rms, Other, and then a total figure of \$94,-

It does that figure, which I have just quoted,
?

That reflects the receipts during the three-
period.

Does that figure include the rentals for Feb-

(Testimony of Roy E. Hallberg.)

were received on the last day of—that we collect rents were for the month following or whether they were for that month and a little bit delinquent coming in.

Q. Mr. Hallberg, you operated on a cash receipts and disbursements basis, did you not?

A. Yes.

Q. Then this figure \$94,153.59 represents [61] actually received during the three-month period of the receivership, is that correct, sir?

A. That is correct.

Q. Do I understand your testimony to be that you cannot state definitely at this time whether the total includes the rents from the five apartment houses or one or more of them for February 27th and 28th?

A. No, it would be pretty hard to tell.

Mr. Whyte: I have no further questions for the direct examination of Mr. Hallberg, your Honor.

The Court: Then we will take a brief recess, which we will hear your expert witness, and then we will return to Mr. Hallberg for a cross examination.

Mr. Whyte: Thank you.

(Witness temporarily withdrawn.)

The Court: We will take a 10-minute recess.

(Short recess taken.)

Mr. Whyte: I have one or two short questions.

ROY E. HALLBERG

as a witness in his own behalf, having been duly sworn, resumed the stand and testified further as follows: [62]

Direct Examination—(Continued)

(By Mr. Whyte): Immediately before the I asked you whether or not the rents for 26th, 27th and 28th were included in this figure of \$94,153.59 shown on Schedule attached to your report, and I understood you to testify that you could not be certain whether they were included or were not included.

Calling your attention to a footnote on the second page of Schedule B, preceded by an asterisk and reading, "Receipts for the month of February in- those only for 25 days", does that refresh your recollection as to whether or not February 27th and 28th receipts, rental receipts were included in the figure of Ninety Four Thousand dollars?

The three days you refer to were not included in these figures, and the asterisk with the notation there takes care of that. That was in order to explain it.

Whyte: All right. No further questions.

(Witness temporarily withdrawn.)

Whyte: Mr. Jefferson Mann.

(Testimony of Jefferson A. Mann.)

The Clerk: Please be seated. Your full sir.

The Witness: Jefferson A. Mann. [63]

Direct Examination

Q. (By Mr. Whyte): Where do you reside, Mann? A. In Glendale, California.

Q. What is your business address?

A. 624 Security Building, 510 South S Street, Los Angeles.

Q. In what business are you engaged?

A. I am a licensed real estate broker and estate appraiser.

Q. For how long have you been engaged in the State of California in real estate sales or activities connected with real estate?

A. Since 1933, which is 21 years, with the exception that prior to that time I engaged in real estate activities on my own account.

Q. Were you at any time ever connected with R. A. Rowan & Co.? A. I was.

Q. What is R. A. Rowan & Co.? What is the nature of their business?

A. R. A. Rowan & Co. real estate company which has been operating for over 50 years. Their office is located in the Rowan Building at 5th and Spring Streets, Los Angeles. Their principal business is the sale, leasing, management and [64]

mony of Jefferson A. Mann.)

me properties of all kinds, and industrial. Are you able to tell us how R. A. Rowan companies in size with other real estate companies in the city?

To the best of my knowledge they are the management company, real estate management company in the West. I think they are second in the volume of sales and leases in the

When did you join that organization?

July 15, 1933.

For how long did you remain in their employment?

Until September of 1953, with two exceptions. In 1937 I was hired by the General Petroleum Corporation, in their Real Estate Department, for special activity. And in 1939 I returned again to Rowan & Co.

In 1942 I was loaned to the United States Government, U. S. Corps of Engineers, Real Estate Section, for the purpose of acquiring various properties for use of the Army during the war period. I returned to Rowan & Co. in December of 1945 and continued there until I went into my own business in September of 1953. [65]

What was the nature of your duties while you were employed by Rowan & Co.?

(Testimony of Jefferson A. Mann.)

activities were the sale, leasing and appraising real property.

Q. Can you tell us some of the concerns for whom you sold or appraised or leased real property in this area?

A. I have appraised property for various government bodies, such as the Federal Housing Authority, United States Government, State of California, both the Highway Division and Finance Division, Corporation Commissioner, the R.F.C. University of California.

I have appraised property for and appeared before the Income Tax Division, testified in the Superior Court, Federal Court, appraised property for the Los Angeles Realty Board, Chamber of Commerce, American Red Cross and various banks such as Security Bank, Citizens National Trust Savings Bank, Trust Department, and for the bank itself, and Farmers & Merchants Bank, Wells Fargo and Union Trust Company of San Francisco. I have appraised for various oil companies, such as the General Petroleum, Texaco, MacMillan Petroleum, Fullerton Oil, Century Oil, various railroads and appraised for many corporations.

I have leased or sold to many corporations. I have [66] been appointed by Superior Court referee, by Superior Court Judge Thurman Clarke. I have appraised various estates, such as the banking estate of William A. Garland Estate.

mony of Jefferson A. Mann.)

I have appraised land and properties for the Verde Land & Water Company of Beverly Hills, the Janss Investment Company of Beverly Hills, the Janss Real Estate Company and the Auto Club of Southern California, and many, many

You mentioned that from about '42 to 1944 you were with the United States Army Engineers and Real Estate Division?

That is correct.

What type of service did you perform for

The acquisition for use by the U. S. Government of all types of government land in southern Arizona, south of San Luis Obispo, Arizona, Nevada and as far south as the Mexican line in Arizona and in California. That constituted all types of properties, from airport landing fields to small use of barracks or balloon sites, large warehouses, all types of properties.

Are you familiar with apartment buildings, Mr. Mann? A. I am.

What has been your experience with them?

I have sold large apartments. I have appraised a [67] number of them.

Mr. Mann, please assume the following facts:

On November 30, 1953, by order of this court,

Mr. Hallberg was appointed Receiver of all

(Testimony of Jefferson A. Mann.)
faithful discharge of his duties as Receiver. C
about the same date he took possession of the
lowing properties constituting the principal a
of the former Richman Trust, to wit: five a
ment houses, being the Canterbury Apart
Hotel located in Hollywood, California, and
Fountain Manor Apartment Hotel, the O
Cromwell Apartment Hotel, the Western
Apartment Hotel and the La Loma Apart
Hotel, all located in Los Angeles, California.

The Canterbury Apartment Hotel contains 9
dividual apartments whose rents range from
proximately \$65.00 to \$175.00.

The Fountain Manor Apartment Hotel con
91 individual apartments whose rents range
approximately \$65.00 to \$135.00.

The Oliver Cromwell Apartment Hotel con
94 individual apartments whose rents range
approximately \$45.00 to \$115.00.

The Western Arms Apartment Hotel contain
individual apartments whose rents range from
proximately \$50.00 to [68] \$95.00.

The La Loma Apartment Hotel contains 5
dividual apartments whose rents range from
proximately \$45.00 to \$57.50. The fair market
of these five apartment buildings is approxim
\$1,200,000.00.

A brief summary of the Receiver's education
previous business experience is as follows:

mony of Jefferson A. Mann.)

ree. During the year 1931 he managed from 10 buildings of different types ranging from small houses up to large apartment buildings, the largest being an apartment hotel containing 600 apartments, in connection with the administration of the receivership in Chicago, Illinois.

He was later employed for a number of years with the Garrett Company in New York, who are fruit growers and vintners, their principal office being located in New York, N. Y. During the last four or five years of his employment with this company, which ended on or about January 1, 1948, he occupied the post of Eastern Sales Manager and received a net compensation of \$40,000.00 per year.

Immediately after January 1, 1948, he came to southern California where he has resided continuously to the present date. While living in southern California he has owned and actively engaged in the management of apartment houses and [69] other real estate properties located in this area. He has been engaged in various business ventures while living in southern California.

Hallberg's tenure of office as Receiver of all real and personal properties constituting the assets of the Richman Trust continued from on or about September 1, 1953 to and including February 28, 1954.

(Testimony of Jefferson A. Mann.)

manager operating under the Receiver's direction. These managers received their compensation from the receivership assets. The Receiver also employed a full time bookkeeper in connection with the operations of the former Richman Trust, who was paid a monthly salary from the former trust assets.

The Receiver was also assisted by his wife, Hallberg, who collected the rents from each of the five apartment buildings at least three times a month and deposited them in the Receiver's bank accounts. Her duties also included supervising the repair and decorating of the individual apartments. Mrs. Hallberg received no compensation from the estate. She is a graduate of the University of Minnesota, and in the early 1940's was one of the women investment counselors in New York, and She also holds a real estate broker's license in California. [70]

Throughout the three-month period of the receivership, the Receiver was responsible for the employment and discharge of receivership personnel. In this regard, in February, 1954, he discharged the bookkeeper first employed by him and hired a new bookkeeper. He was likewise charged with the duty of planning the accumulation of monies from the receivership properties to meet substantial current obligations such as taxes and insurance premiums.

During the course of his term of office as Receiver, he reviewed all types of insurance policies

ony of Jefferson A. Mann.)

verage, thereby obtaining for the trust a
t of 10 per cent on the standard rate of the
urance policy covering the Oliver Cromwell,
20 per cent-25 per cent dividend at the ex-
a of this policy.

a time to time he inspected the various
ent buildings, paying particular attention to
lers, refrigeration systems, water heaters,
nts, etc. In this connection he supervised a
repair of the refrigeration equipment in the
n Arms, and selected a new concern to sup-
rigration service at this apartment hotel.
o made decisions respecting the proper
of upkeep and/or replacement of plumbing
Fountain Manor.

supervised the establishment of a new ac-
g system for the above mentioned apart-
uildings, and [71] instructed the bookkeeper
proper method of maintaining this system
nts. During the course of the receivership,
uently actively assisted in the bookkeeping

ne occasion he petitioned this court for au-
to pay Christmas bonuses to employees of
mer Richman Trust, which said petition was
. On another occasion he petitioned this
or authority to renovate individual apart-
l testified personally in connection with

(Testimony of Jefferson A. Mann.)

limited program of renovating individual
ments.

In order to determine whether the rentals charged at the various apartment buildings adequate, he surveyed the areas in the neighborhood of the Western Arms, Oliver Cromwell Fountain Manor to determine the comparative being charged in nearby apartment buildings.

In order properly to prepare a fiduciary income tax return covering the former trust property conferred with employees of the Director of Internal Revenue regarding the tax status of the former Richman Trust, and assisted the bookkeeper in preparing such return.

During the three-month period of the receivership, the gross income from the receivership was approximately [72] \$95,000.00.

On the basis of these facts, do you have an opinion, Mr. Mann, as to the reasonable value of Receiver's services in connection with his administration of the business and affairs of the former Richman Trust? A. I do.

Q. What is your opinion?

Mr. Enright: Pardon me just a minute, please. To which objection is made, first, upon the ground that the subject matter is not one of expert opinion?

Secondly, upon the ground that the witness

mony of Jefferson A. Mann.)

testified to no experience of his own, to the
ment of similar properties.

ly, the hypothetical question misstates much
vidence as of this time.

Court: The hypothetical question, I think, is
y phrased. Of course, there might be dif-
facts put in a different hypothesis, or some
facts herein stated left out, but that would
your hypothetical question, Mr. Enright.

witness, I don't think, has stated sufficient
rity with the compensation usually paid for
of this particular character. He has told us
with [73] Rowan & Co., that Rowan & Co.
a highly diversified type of property, and we
from just acquaintance in the community,
ey handle properties of the character that
olved here.

whether this witness has any knowledge of
es are charged for the handling of proper-
the type named here, when they are handled
van & Co. or by others, I don't think we
en told.

nk you had better lay a little further found-
that respect.

as to the objection to this as being not a
for expert testimony, we are confronted
e problem that an officer of the court, acting
ceiver, acts on a different basis than a per-

(Testimony of Jefferson A. Mann.)

sated as fully as if he were in private service. ever, what is paid in private service is one of the things to be considered by the court in determining what the compensation should be.

So the objection is provisionally sustained. If it is sustained only as to the inadequacy of the foundation.

Mr. Enright: May I take the witness on direct, as to his qualifications on the particular subject matter?

The Court: Yes. Let's have Mr. Whyte state what he [74] wishes to, and you can cross-examine on that particular phase before he answers the question.

Q. (By Mr. Whyte): Mr. Mann, what familiarity, if any, do you have with the compensation paid in this area for property management, particularly with reference to apartment hotels?

Mr. Enright: Objection is made upon the ground that his familiarity does not qualify him to express an opinion. His experience in the field might be a proper question.

The Court: Overruled.

The Witness: I have on many occasions estimated the rental—the management schedule—force on various properties, not only those handled by Rowan & Co., but I have been in many properties of which I have been requested and hired to appraise.

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r the management of similar types of prop-

ently was personally responsible for bring-
to Rowan & Co., and negotiated contracts
management of property of an income resi-
character, not as large an apartment, but a
apartment.

y sales experience it was necessary to deter-
ne net incomes of apartments, and in the
of determining those sources of net income
necessary to have [75] all of the facts of
as paid to managers, to operators, to resi-
operators of apartment houses of this char-

(By Mr. Whyte): Do you know whether
the Los Angeles Realty Board has a schedule
agement fees for property of this type?

They have.

Are you familiar with those schedules?

I am.

Do you have with you the most recent sched-
ed by the Los Angeles Realty Board?

I have.

With regard to management fees for apart-
mildings? A. I have.

Directing your attention to the handbook

(Testimony of Jefferson A. Mann.)

can you tell me approximately when that handbook was issued? A. December 1, 1952.

Q. And are you able to state whether or not this is the latest handbook put out by the Los Angeles Realty Board covering those subjects?

A. To the best of my knowledge it is the latest book. [76] I am a member of the Realty Board and am advised of these things, but this is the schedule I have received.

Q. Will you turn to the page in that handbook which deals with the commissions for property management of such buildings as apartment hotels?

A. (Witness complies) The schedule as set forth for management of property fees for business properties, including hotel apartment houses and low court buildings appears on page 13.

Mr. Whyte: I submit that a sufficient foundation has been laid now for the hypothetical question I put to this expert witness.

The Court: All right. Mr. Enright wants to question him before he answers.

You may do so.

Voir Dire Examination

Q. (By Mr. Enright): Is there any uniformity, Mr. Mann, in the nature of the services rendered by the property managers?

A. It varies according to circumstances.

Q. Some managers would furnish complete

mony of Jefferson A. Mann.)

And some managers would furnish complete keeping records and others would not? [77]

Well, they all furnish bookkeeping records. They are all charged with producing monthly reports on all management property. That is part of the duties of a manager.

And the manager pays for that service himself? He pays the personnel in performing that service, in the monthly report?

Not necessarily, no.

Well, is there any uniformity at all as to the way they pay for that?

No, sir, there is not. It depends on the negotiation of the contract.

You personally, I assume, have not acted as property manager yourself at any time?

No, sir, I personally have not been charged with the operation of apartment houses. I was a witness in a case in which there were two apartment houses in receivership. It was one of my duties to know the facts and conditions surrounding that receivership.

That was that particular case involving that particular two apartment houses and the activities of the persons interested in the apartment houses, is that right?

That was the case, yes, sir. I was called in to

(Testimony of Jefferson A. Mann.)

business is that of managing of property, apartment house property, [78] known as certified property managers?

A. No, I do not know that concern.

Q. Certified property managers?

A. No, I do not know that concern, sir.

Q. Well, there is a board or a group of people who carry on that business in Los Angeles and in various parts of the United States that are certified as being qualified property managers? Are you familiar with that fact?

A. I am familiar with the Los Angeles Apartment House Managers Association, of which David Culver, a close personal business associate, was formerly the president. Mr. Sid Beach, I believe, is the president at the present time. That is the association I know of here.

I don't think I answered your question fully. I don't know the concern that you mentioned.

Q. Now, are you familiar at all with whether or not there is any uniformity of the services that are rendered by the apartment house property managers?

A. To a degree, there is a uniform service rendered. It is modified, depending on the particular circumstances.

Fundamentally, the services rendered are uniform to this degree: It is the duty of the manager to protect the interests of the owner of the property.

ony of Jefferson A. Mann.)

decision for what should be done on the management of that property.

the province of a manager to see the bills paid. Those are all uniform. It is proper function of a manager on a uniform basis to see that departments are maintained in proper condition, they must—that the functions of the building go on, such as refrigeration, elevator service, janitor service, if any, heating and those types of services.

They are more or less standard. It comes into a new entity and an additional function when a manager is required to possibly handle the financial end. I mean by that renegotiation of contracts, renegotiation of loans, making major decisions as to alterations, and the function of preparing tax returns and other entities that become an additional function over the standard operations. Now, this realty board document you have before you, sir, on page 13, refers only to fees for managing apartment houses, and it specifies a particular percentage, doesn't it?

What does, sir.

Now, that percentage specified there covers the service of the property manager in collecting rents, doesn't it?

A. Yes.

And he bears the expense of collecting those

801 A That is correct

(Testimony of Jefferson A. Mann.)

Q. And he bears the expense of negotiating contracts for the painting or the decorating apartments?

A. Not necessarily, Mr. Enright.

Q. Then will you explain, sir, what is the amount specified there, 5 percent for the property manager?

A. The minimum charge of 5 percent on monthly rents collected, where the collections exceed \$2,000.00 per month. Part B, "Where monthly rentals from the single tenants or the average monthly rentals from two or more tenants in the same building is over \$2,000.00, the charge shall be 3 percent."

Q. There is nothing in the book there that specifies what service will be rendered, though, for 5 percent or that 5 percent, is there?

A. That is correct, sir.

Q. Have you any knowledge of any rule or regulation setting up these standards of ethics, and what service will be rendered?

A. I have negotiated, as I said before, contracts between property owners and management companies, such as Rowan & Co. I have made studies of those contracts in [81] the course of my work, praising various properties.

I have discussed the matter with management companies, other than Rowan & Co., as, for example, Benter Management Company and as-

ony of Jefferson A. Mann.)

s it your opinion that the 3 percent for col-
in excess of \$2,000.00 a month is reasonable
going rate?

Whyte: Well, now, I submit that is going
voir dire. The voir dire was supposed to
en——

Court: It is, yes.

Enright: Then I renew my objection.

Court: May I ask a question? Are different
charged for short term than for long term
ment, as, for instance, in this case that the
s now considering, we have an exact four
term.

d there be a different rate within the calling
short term, such as four months, than there
e for an annual or bi-annual contract, some-
e that kind?

Witness: There would be, your Honor, for
nite reason that the cost of setting up the
on to handle properties such as we are talk-
ut in this case is rather heavy. They have
n men, they have to set up their bookkeep-
tem, they have to enter all their records,
s quite an elaborate thing to accomplish. [82]
few concerns would be very much interested
t terms unless the compensation was com-
ate with a short term rather than a long
eration, because they would have to recover

(Testimony of Jefferson A. Mann.)
they were something I thought if I didn't ask
I might forget. I would rather like to know
practice in the vocation in regard to this.

Now, proceed to your questioning.

Mr. Whyte: I renew the long hypothetical
question which I asked before, and submit that the
Witness' qualifications as an expert have been laid
sufficiently so he ought to be able to express his
opinion as to the reasonable value of the Receiver's
services in connection with his administration of
the business and affairs of the former Richman
Trust.

The Court: Do you have that question in mind?

The Witness: I do, your Honor.

The Court: You have a copy before you?

The Witness: Yes.

The Court: You had seen it before you came
here today?

The Witness: I did, sir.

The Court: You may answer.

The Witness: In my opinion, the reasonable
value of the Receiver's services in connection with
his administration of the business and affairs of the
former Richman Trust, in [83] my opinion, is
percent.

The Court: Of what?

The Witness: Of the gross income from

United States
Court of Appeals
for the Ninth Circuit

ERICK I. RICHMAN, Appellant,

VS.

TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver,
Appellees.

TIDWELL, Appellant,

VS.

ERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver,
Appellees.

Transcript of Record

In Three Volumes

VOLUME II.

(Pages 317 to 648, inclusive.)

from the United States District Court for the Southern
District of California, Central Division

United States
Court of Appeals
for the Ninth Circuit

ERICK I. RICHMAN, Appellant,
vs.

TIDWELL, ROY E. HALLBERG, as Re-
ceiver of all the real and personal property
constituting the former Richman Trust, and
JOHN WHYTE, attorney for Receiver,
Appellees.

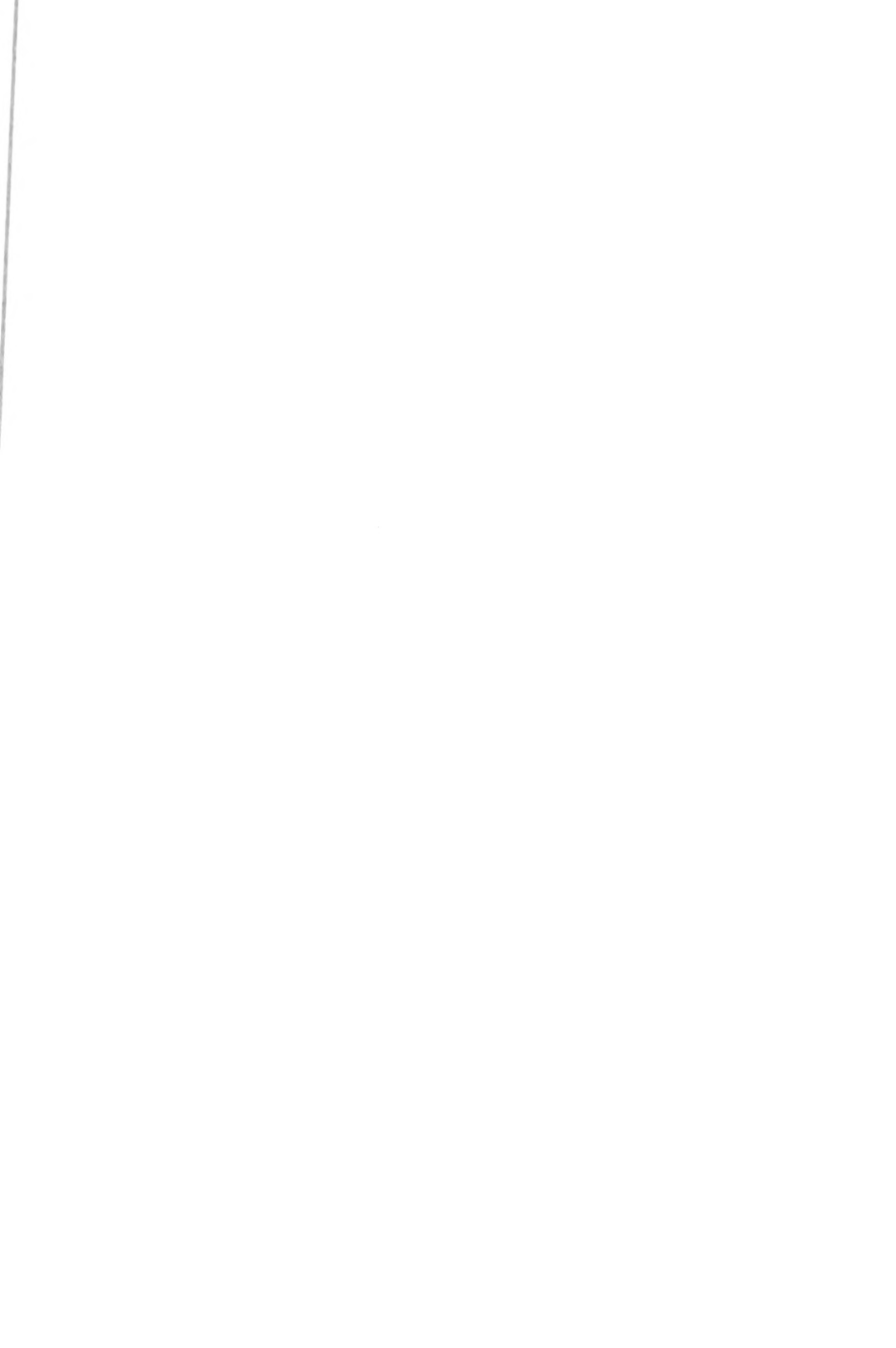
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Trust, and JOHN WHYTE, attorney for Re-
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ony of Jefferson A. Mann.)

Cross Examination

By Mr. Enright): Mr. Mann, you took into
ation the duration of the term, that it was
ecember 1, 1953, to February 28, 1954, that
months? A. I did, sir.

and in considering those three months you
o consideration the expense that the person
e put to who would be rendering these serv-
h as assigning men, is that right?

Yes, sir.

and setting up bookkeeping, is that right,
ense that would be incurred?

That is correct.

Assuming there was no expense on the part
Receiver, other than his own personal time,
that affect your opinion as to the 5 percent?
My opinion of the 5 percent is based on the
I know them in this case, and in this par-
case my opinion of the 5 percent contem-
he payment by the trust [84] of the book-
expense.

What wasn't included in your hypothetical
nt, was it? A. I am sorry, sir?

What wasn't included in the hypothetical
nt submitted to you, that the trust would pay
kkeeping expenses, was it?

Whyte: Yes, it was, Mr. Enright.

Witness: Yes.

(Testimony of Jefferson A. Mann.)
with the operations of the former Richman
who was paid a monthly salary from the fo
trust assets.”

Q. (By Mr. Enright): Did you take into
sideration that the Receiver was paid a full
salary, while being employed, by the Coun
Orange, for his full work week commencing
day morning at 9:00 and ending at 5:00 o
each day, and ending at 5:00 o'clock on Frid
each week, during the period commencing D
ber 7, 1953, the week after he was appointed, t
including——

Mr. Whyte: That is objected to as assu
facts not in evidence.

Q. (By Mr. Enright): ——through and
cluding February 28, 1954? Did you take into
sideration any such facts as [85] that?

The Court: The objection should be placed
the question has been completely put. I suppos
were afraid the witness would come right out
an answer, before you got a chance to object. I
think he would. He seems to be a deliberate so
a witness. But I think the question is proper
course, it assumes. It is not a hypothetical quest

It is cross examination upon the hypoth
question you put. It assumes something as to v
I suppose Mr. Enright is going to propose
evidence. If he doesn't propose some evidence
will be in a position of having asked a question

mony of Jefferson A. Mann.)

s of employment by the County of Orange, was as extensive as this question indicates, having scanned the deposition, in order to be prepared for this hearing, I recall that Mr. [redacted] testified that he did hold a position with the County of Orange and it might be by the time we have the entire picture before us, that what Mr. [redacted] suggests in his question will be found to be true. I don't know. The objection is overruled.

Enright: Would you read the question?

The question was read.)

Witness: My answer to that is no, I did not know the reason I had no knowledge of it. And in my [86] explanation of my statement, it would not have made any difference in my opinion of [redacted] because he rendered the services required of him in spite of the fact he was employed in other positions.

(By Mr. Enright): Pardon me, sir. Go ahead if you wish to go on. You are non-responsive in answering my question. Go ahead.

[redacted] I thought I had answered. I had no knowledge of it, and I was explaining my answer, Mr. Enright.

Court: You are entitled to give that explanation. If you don't, in response to this question, Mr. Enright will probably ask some more, or Mr. [redacted] will. So we are going to have the whole picture.

(Testimony of Jefferson A. Mann.)

he performed the services, other than because one has told you and stated this hypothetical question to you?

A. I believe as an expert witness I am entitled to make certain assumptions on facts submitted to me.

The Court: You may assume that everything stated in this hypothetical question is true and can't add more facts to it.

The Witness: And basing my answer and explanation on the facts as contained in that statement, and as his Honor just stated, those facts are true, for that reason it would [87] not have any difference.

Q. (By Mr. Enright): Now, if those facts are not true, then you would have a different opinion, wouldn't you?

A. Naturally.

The Court: Since you have worked in this business, tell me, is it possible to do everything that is required in this hypothetical question asked you and hold some other employment at the same time or is this a full time job?

The Witness: Your Honor, in answering that question, if I may in this way, he was represented by his wife, who was an unpaid employee and transacted a portion of the business.

He further was responsible for the functions relating to Power & Co. for illustration of the

ony of Jefferson A. Mann.)

function on Saturdays, Sundays. He can
in the evenings.

would say, in answer to your Honor's ques-
at it is entirely possible for a man to do
en though employed in another occupation.

Court: Well, tell me, is your acquaintance
s type of business such that you would know
it is customary for them to do so?

Witness: Your Honor, the customary oper-
s for one man to handle many properties,
the representatives of Rowan & Co. They
riodic trips to the [88] properties. The resi-
sonnel in the property, such as the resident
r or whoever is there, has direct charge sub-
the functions to the head of the apartment
head of—such as Mr. Hallberg was doing. It
ustomary for the individual himself in his
to do most of these functions. That is gen-
elegated to some subordinate.

By Mr. Enright): You were speaking of
y management, were you not, sir, and not a
appointed by the court——

I am speaking of property management, yes,

even that was your question, wasn't it?

Court: Yes. I understand that this man is
an expert on property management and not
expert on receiverships.

(Testimony of Jefferson A. Mann.)

cause although we must apply the receivership an intelligent application of that rule call knowledge of what is done in private business well.

Mr. Enright: Very well. May I ask a further question?

The Court: Surely.

Q. (By Mr. Enright): Did you take into consideration that the only experience this man had since, I will say, [89] January 1, 1933, until the time of his appointment in the management of apartment house properties, and then only one apartment house having 16 or 14 units, and that only that he managed that for a period of December 20, 1949, to November 29, 1950, that is, approximately 11-month period, operating one apartment house of 14 units, did you take that into consideration, that that was the experience of this man so far as apartment houses was concerned?

A. The experiences set forth in this question related to me, was that he managed some 50 or 40 to 50 buildings of different types, and that he had also, while living in southern California, and actively engaged in the management of apartment houses and other residential property in this area. I took that into account.

Q. Did you take into account that the apartment house he operated or owned or

ony of Jefferson A. Mann.)

, to November 29, 1953? Did you take that
ount?

No, I did not know that fact.

Court: What difference does it make in
imate answer, assuming that fact, as stated
Enright, to be a fact?

Witness: It would have made no difference
answer, your Honor. [90]

By Mr. Enright): Am I correct then, that
having any experience wouldn't have made
ference, in your opinion, as to the value of
ices being 5 percent?

No, that is not my answer.

If his only experience were 11 months in one
ent house, wouldn't that have a bearing on
inion, as to the value of his services?

That is not my understanding of it. I un-
d from the information supplied to me, upon
I predicated my answer, that he had man-
to 50 buildings. The period of whether or
had managed one building since would not
material effect, because he would be well
from previous experience, where he had
d a large group of buildings. You just don't
overnight your experiences under that type
ation.

Court: Counsel is making the point here
t was very remote in time.

(Testimony of Jefferson A. Mann.)

The Witness: He is well versed in the mechanics of operation, yes, your Honor.

Q. (By Mr. Enright): And you would say that the bond for the cargo operations, some 40 places for a bond during the year 1931 would be experience qualifying a person in December 1953 for [91] the operation of apartment houses in Los Angeles?

A. I would say that management of apartment houses in 1931 was a far more difficult period than to the period after the famous 1929 market crash when apartment houses were very hard to operate. They were very difficult to obtain funds to operate. It was particularly difficult to even get tenants to live in them.

I would say that his experience at that time would stand him in good stead today.

Mr. Enright: No further questions.

Redirect Examination

Q. (By Mr. Whyte): What special significance, if any, did you attach to the fact, assumed in the hypothetical question to you, that the Receiver posted a bond of \$75,000.00 in this proceeding to insure the faithful discharge of his duties as receiver?

A. To obtain \$75,000.00 bond the man would have to be of financial stability, good moral character and good reputation, to be able to obtain a bond of

ony of Jefferson A. Mann.)

which a Receiver has for the acts of his
and subordinates?

did, very definitely. He is responsible, he is
to all actions of those people under him.
ot only financially but he is morally respon-
d that is [92] the reason for the \$75,000.00

Whyte: I have no further questions.

Court: Neither have I.

Enright: I would like to ask Mr. Hallberg
estions this afternoon. It may well be I can
using his employer coming in from Orange
I have him under subpoena at this time.

Court: I intended to sit about until 20 min-
5:00. I have appointments with counsel in
matter that wanted to come after court,
ld them to be here at a quarter of 5:00.

Whyte: May Mr. Mann be excused?

Court: May this witness be excused?

Enright: So far as I am concerned.

Court: You are excused.

Witness: Thank you, sir.

Witness excused.)

ROY E. HALLBERG

s a witness in his own behalf, having been
sly duly sworn, resumed the stand and tes-
rther as follows:

(Testimony of Roy E. Hallberg.)

now employed by the County of Orange, are not? [93] A. That is correct.

Q. And you made an application to the County of Orange before December 1st, at least in the event of taking a civil service examination, did you?

A. That is correct. That is not a civil service examination. That is a county examination.

Q. Some form of county examination. You go to work for the County of Orange on December 7, 1953? A. That is correct.

Q. Your hours of employment are from 8 o'clock in the morning to 5:00 p.m. each day, Monday through Friday?

Mr. Whyte: Your Honor, I am going to register an objection to this line of testimony on the ground that it is immaterial and irrelevant.

The question before the court is what is the reasonable value of the services which the Receiver performed. What he may have done apart from those services has nothing to do with the determination of compensation that should be awarded to him for what he has done, without controversy.

The Court: But it appears to be controversial. Our knowing what other demands he had upon his time, during the time he was acting as the receiver, I think would be very valuable to the court. The objection is overruled.

Mr. Whyte: Very well, your Honor.

Mr. Enright: Please read the question [94]

mony of Roy E. Hallberg.)

(By Mr. Enright): Is Mr. Louis Byrum
immediate superior? A. He is.

Did he direct you to report for work each
day of the week, Monday through Friday,
you commenced to work on or about Decem-
ber 1953?

No, the only thing that I have to do is put
eight hours required.

My question was, did he direct you to put in
eight hours' working time between the hours of 8:00
a.m. and 5:00 p.m. A. No.

You did commence work on December 7,
A. December 7th, correct.

You were required to put in eight hours'
working time for the County of Orange each work day,
Monday through Friday?

With one exception.

February 22nd? Washington's Birthday?
No.

Christmas? A. No.

What other exception?

The exception was when I went with the
others [95] they were informed I had prior com-
mitments, which you can verify, that might take
time.

Court: What did they tell you about it?

Witness: Sir?

Court: What did they say about it, when

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): You were required, though, to render eight hours' services to the County of Orange, were you not, each day?

A. With the exception of those commitments which were entered into prior to December 7-

Q. And you were paid a monthly salary for those services, were you? A. That is correct.

Q. The monthly salary was \$355.00 per month?

A. Correct.

Q. And you were paid that salary for the remainder of December, 1953?

A. Not for the month of December; just for the remainder of the month.

Q. That is, the remainder of the month of December, excluding the first week?

A. That is right.

Q. At the rate of \$355.00 a month? [96]

A. Yes.

Q. You were paid \$355.00 for the month of January? A. Correct.

Q. And the same for the month of February?

A. Yes.

Q. Same for the month of March, 1954?

A. Yes.

The Court: Would it be fair to say that the County of Orange got on an average of eight hours a day out of you during the time counsel has been required into?

The Witness: Yes.

mony of Roy E. Hallberg.)

tition in this matter, at which time you testified concerning your duties for the County of _____?

Will you state that question again?

Enright: Please read the question.

The question was read.)

Witness: Yes.

By Mr. Enright): Directing your attention to your deposition, page 13, line 6:—

Whyte: Perhaps you had better show the witness the deposition, if you are attempting to lay a foundation for impeachment, Mr. Enright.

Enright: Yes, I will. To page 15, line 12.

Whyte: May I show my copy to the witness?

Court: Yes, he is entitled to see it.

Enright: May I have the original deposition because I am only working from a copy. I have never seen the original yet.

Whyte: What are the pages and lines again?

Enright: Page 13, line 6, to page 15, line 12.

Do you inquire have there been any changes on those pages?

Whyte: Yes, there have been a few changes.

Enright: Is that the scrubbing-up of the _____? Is that the only thing that was referred to this morning? I guess that is all.

By Mr. Enright): You have that before you?

Whyte: Let's get the page and line again.

(Testimony of Roy E. Hallberg.)

The Court: May the original deposition be brought in from my chambers? I will put it here and look at it, Mr. Enright. I don't recall whether this, at this particular place there are changes or not.

Mr. Enright: I think there was a change in "huh", to "Yes."

Mr. Whyte: I still don't have the concluding page and line to which you refer. [98]

Mr. Enright: Please read it to him.

(The record was read.)

Mr. Whyte: Page 15, line 13.

The Court: At the places you have just mentioned, Mr. Enright, I do not see any changes in the original.

Put the original before the witness.

Mr. Enright: I saw the change, I think, on Mr. Whyte's copy. That is what I was basing my testimony on.

The Court: There are changes on those lines, but I understand at the lines you are referring to there are no changes, at the immediate lines.

Why not come up and take a look at the deposition, so everyone will know what we are doing?

Q. (By Mr. Enright): At that time did you testify as follows, concerning your duties at the County of Orange, commencing on page 13, line 6:-
I will read—

ony of Roy E. Hallberg.)

Well, let's see, I have done some appraisal
and I managed our own building.

For whom did you do appraisal work, or
jobs, since October of '53?

County of Orange.

County of Orange, and would you explain
what you mean by 'special assignment' or
special jobs'?

Well, those are usually somebody needed a
help on something. It was more or less jobs
you see, I could—until just a few years ago,
about a year ago, I wasn't capable of doing
sustained work.

Now—

I think that will hold it for the time being.

Well, I would like to know. You see, that's
'53. You were appointed receiver on De-
cember 1st, '53. A. Yes.

Were you doing special jobs and assignments
from your appointment? A. Yes.

Hallberg: Took a trip or two for Binkley's,
didn't you?

Witness: Well, I took that prior to De-
cember 1953. That's some time ago. Yes, I have
been doing some since that time.

Enright: Q For whom?

For the county.

County of Orange? A. Yes. [100]

(Testimony of Roy E. Hallberg.)

Q. Appraisal Department of the County of Orange? A. That's right.

Q. Is that under the Board of Supervisors or——

A. Well, it's under the County Appraiser.

Q. I beg pardon?

A. Under the County Appraiser.

Q. Would that be the County Assessor's Office?

A. County Assessor's Office, that's right.

Q. On how many occasions did you do appraisal work for the County Appraiser's Office?

A. Quite a few.

Q. In number how many?

A. Oh, I—I couldn't tell you exactly. I haven't counted them.

Q. You have a particular rate of compensation that you receive from the County of Orange?

A. Yes.

Q. What is the rate of compensation?

A. Well, it's about \$350 a month.

Q. What are the terms as to time that you are required to expend in rendering services to the [101] County of Orange?

A. Well, it's more or less on my own.

Q. Well——

Mrs. Hallberg: You haven't done that since October.

Q. (By Mr. Enright): You have done no work for the County of Orange since October, 1953, is that correct?

ony of Roy E. Hallberg.)

nty, yes; I have been working there at the
since that time.

On how many different occasions?

Right straight through.

Hallberg: No, not since October of '53."

ou so testify at that time, that is, April 22,

Court: What he wants to know, Mr. Hall-
did the reporter get it down correct? Are
the questions asked and the answers you an-
at that time?

Witness: I question some of the phrase-
ere.

Court: That is not what we can go into
ne question is, is that a correct report of
as said at the time that it is reported?

Witness: I believe it is.

By Mr. Enright): Now, directing your at-
to your deposition again, on April 22, 1954,
34, line 15, [102] to page 38, line 18.

I ask you to review those pages and state
e or not you did so testify at that time.

Now, what is your first question?

Enright: Read the question, please, Miss
er.

The question was read.)

The witness complies.)

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Did you so testify that time? A. I did.

Q. At that time you testified, and may I the original, not, as you have made some changes commencing at page 34, line 15:

“Q. Now, you are presently employed, are you by the County of Orange? A. That’s right.”

Q. At what salary?

A. I think you have that.

Q. \$350 a month? A. 300——

Q. You are presently employed?

A. That’s right.

Q. When did you commence working for [103] County of Orange at 350?

Mr. Whyte: Objected to as having already asked and answered.

Mr. Enright: He has not stated the date or month he commenced working. He says October, November or December. Now, which month is it?

Mr. Whyte: The witness has stated to the best of his recollection, Mr. Enright. It’s been asked and answered, and I am going to instruct the witness not to answer it further.

Mr. Enright: Q. All right, which month of the year 1953 did you commence working for the County of Orange as an appraiser.

Mr. Whyte: Same objection.

Mr. Enright: You instruct him not to answer.

ony of Roy E. Hallberg.)

Enright: Will you cite the witness, instruct
ness, Miss Reporter?

Whyte: You don't have to. I will stipulate
u that the questions may have been put to
ness in the proper manner. You don't have
rough any formal rigmarole.

Enright: I appreciate your concept of rig-
but you do agree, do you, Mr. Whyte, that
he reporter has instructed the witness to
this question: In what month of the year
d he become an employee of the County of
at a salary of \$350 a month?

Whyte: So stipulated.

Enright: And the witness refuses to an-

Witness: On advice of counsel.

Whyte: On advice of counsel.

Enright: All right.

Now, do you have any particular office hours
the week as an employee of the County of
? A. No.

Are you required to report at any time on
v of any week? A. No.

Will you state how many days during the
of December you worked for the County of
; that is, December, 1953?

Whyte: Objected to as having already been

(Testimony of Roy E. Hallberg.)

Q. Do you have a telephone extension number?

A. No.

Q. Who is it that assigns you or directs your work whereby you receive a salary of \$3,000 per month as an employee of the County of Orange?

A. Chief Appraiser of the Personal Property Division.

Q. His name, sir? A. Mr. Louis Byrnes.

Q. Would you spell it? A. B-y-r-a-n-e-s.

Q. How long have you known him?

A. About three, six months, I guess. No, since about—it's about four months.

Q. Can you state how many days during the month of December you rendered services to the County of Orange?

Mr. Whyte: Objected to as having already asked and answered.

Mr. Enright: Q. Will you state how many days—and this has not been asked of you—you expended your time in rendering services to the County of Orange in the month of January, 1954?

Mr. Whyte: If you can recall, Mr. Hallberg.

The Witness: No. [106]

Mr. Enright: Q. On advice of counsel, you can't recall, is that right, Mr. Whyte?

Mr. Whyte: I asked him if he can recall.

Mr. Enright: Is that an objection for this court?

ony of Roy E. Hallberg.)

Enright: Are you aiding the witness, Mr.

o you recall——

Whyte: Mr. Enright, I don't like your atti-

Enright: I appreciate you don't. That's mu-

Whyte: I stated on the record that if the
can recall, he may answer.

Enright: Is that an objection?

Whyte: That is not an objection.

Enright: Very well.

an you recall, Mr. Hallberg?

said I couldn't recall.

ow, I will ask you another question, Mr.

r: Can you recall how many days during
th of February, 1954, you spent in render-
ces to the County of Orange at a salary of
month? [107]

he exact time? I cannot recall.

an you give us any estimate at all as to the
of time you spent in either one of those
months, December, January or February,
54?

Whyte: Will you read the question back,
Miss Reporter?

The pending question was read by the re-
er.)

(Testimony of Roy E. Hallberg.)

Did you so testify, and the following did at that time, on April 22, 1954, is that correct?

A. Yes.

The Court: I understood his testimony he day to be that he worked on an average of hours a day on a five-day week for the County of Orange during the time in question.

Is that right, Mr. Hallberg?

The Witness: That is correct.

Mr. Enright: Well, I had to ask the question because the witness at page 36, I think it is, answers, testified at that time, so now I am formed his questions and answers were:

“Q. Now, do you have any particular office during the week as an employee of the County of Orange? [108] of Orange? “A. No.

“Q. Are you required to report at any time any day of any week? “A. No.”

That is the subject matter we are now informed. I take it, this Receiver had an eight-hour day for the County of Orange.

The Court: As I understood him, it was an average of eight hours per day on five-day week but that it wasn't always eight in any one particular day, it just averaged up to eight hours.

Mr. Enright: Well, I understand that to be his testimony. I will clarify, if I may.

The Court: Surely.

Q. (By Mr. Enright): Were you or were

ony of Roy E. Hallberg.)

o. The requirements there are eight hours

Well, what eight hours is it, between mid-
d midnight, or what? A. Could be.

ou mean there are no office hours, so far
re concerned, in your status as an employee
ounty of Orange? [109]

he type of work I was doing——

lease, sir, would you mind answering my
? A. I am trying to.

am not concerned about the type of work
doing. I am concerned only in one point, as
office hours.

nright: I submit it involves only an an-

Witness: I had no office hours.

By Mr. Enright): That is your testimony?
hat is it.

court: Mr. Hallberg, were you appraising
, or what?

Witness: I was auditor-appraiser.

court: Was that work performed in an of-
the county establishment or was it per-

—— The Witness: Out in the field.

court: ——various places.

Witness: Out in the field. A lot of the work
icked up was analyzed and transferred to
ords at home that night.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Weren't you required to see Mr. Hallberg, to spend a one-half day in the office and one-half day [110] in the field?

A. Not necessarily.

The Court: Well, was that the practice?

The Witness: No, it wasn't the practice.

The Court: I don't like to interrupt in the middle of a phase of cross examination, but we are going to adjourn for the day.

You noted the jury case ahead of you, which was scheduled to have ended last week, but it is over as yet.

I know counsel arranged their calendars for the day on which a case is set, so I am making them work on a share-time basis until they get through.

We can open at 9:15, if you like, tomorrow morning, because we are going to have to give them the day off at noon.

You don't have to come at 9:15, if you wish. You will get in a long morning. If it is an inconvenient hour, we will convene at 10:00.

Mr. Enright: I am committed to transacting mental calls between 9:00 and 9:45. I can be in the office at 9:30, perhaps. I had better ask it be at 9:45 if it may.

The Court: All right. We will stand adjourned until 9:45 tomorrow morning.

(Whereupon, at 4:45 o'clock p.m., Wednesday, May 12, 1954, an adjournment was

LOUIS B. BYRUM,

on behalf of the defendants, being first duly testified as follows:

Clerk: Please be seated. Your full name, sir.

Witness: Louis B. Byrum.

Direct Examination

By Mr. Enright): What is your residence, Byrum?

15 North Van Nuys, Santa Ana.

Your occupation, sir?

I am a Deputy Assessor with the County of

Do you know Mr. Roy E. Hallberg?

Yes, sir.

How long have you known him?

I would say approximately five months.

You came to the courtroom with him this

morning, did you?

I came up with him, yes, sir.

Are you in any manner connected with Mr.

Hallberg in your employment?

My position is supervising appraiser, and he is in my department. [115]

Is Mr. Hallberg assigned to appraiser work on real estate and personal property for the County of Orange?
A. He is not.

Does he work under your direction?

He does.

What is his assignment under your direction?

(Testimony of Louis B. Byrum.)

Q. Have you produced the record of Roy Hallberg making application for employment in the County of Orange? A. I have not.

Q. Did you check to see if there was such a record?

A. That is not within my jurisdiction. It is not in my department.

Q. What did you do in response to this subpoena?

A. I found out that my particular position was not either to hire or fire. That is not even under my jurisdiction. I have no access to those records.

Q. Did someone say that to you? I asked you what you had done. You told me what you found out. I believe that is your conclusion.

I am merely trying to find out what you did.

A. I was informed that those were not——

The Court: Then you made some inquiry?

The Witness: I did make some inquiry.

The Court: What he wants to know is what inquiry did you make or what led to your being informed?

The Witness: I found out that the records did not show the employment——

The Court: How did you do that? Did you go down a book and find rule so and so or did you ask the County Council?

The Witness: No, I talked to the assessor

ony of Louis B. Byrum.)

standing that Mr. Hallberg works under your
supervision and direction?

Under my supervision, yes, sir.

Can you state when Mr. Hallberg started to
work under your supervision and direction?

I hadn't stated, no, sir.

Would you state? A. December 7th?

1953? A. 1953.

Did he continue to work under your super-
vision and direction through February 28, 1954?

That is right, yes, sir. [117]

Is he still under your supervision and direc-

A. Yes, sir.

Did you direct him to report for work on the
days of Monday through Friday at a par-
ticular hour in the morning? A. No, sir.

Have you ever given him any direction as to
the hours of his employment? A. No, sir.

You know, of your own knowledge, whether
there are any particular hours of employment?

The county ordinance provides a 40-hour
work week of eight hours a day, but no specific time.

Court: Does it require that 40 hours be de-
voted during the week to county business?

Witness: That is right, yes, sir.

Enright: I must confess, your Honor, sur-
rounding this time, and I will state the basis of the
evidence by interrogating the witness.

(Testimony of Louis B. Byrum.)

The Court: You don't have to state it further if your purpose is impeachment.

Mr. Enright: All right. [118]

Q. (By Mr. Enright): Did you have a conversation on the telephone with me last Tuesday concerning the subject matter of your appearing in this court on Wednesday?

A. I had a conversation concerning appearing, yes, sir.

Q. Now, before that conversation last Tuesday that is, of this week, had you also talked to Winthrop O. Gordon, an attorney practicing in Santa Ana?

A. Yes. He came to my office.

Q. And he served the subpoena upon you, is that right?
he? A. He did.

Q. Did he at that time show you a letter?

A. He did.

Q. He did? A. He did.

Q. Do you have a copy of the letter?

A. I have a copy—I have the original, I believe.

Q. May I see it? A. No, it is a copy.

Mr. Enright: May I have the document marked for identification?

The Clerk: Defendants' Exhibit A for identification.

(Said document was marked Defendant's Exhibit A for identification.)

Q. (By Mr. Enright): Directing your

ony of Louis B. Byrum.)

subpoena was served upon you, which I was some day after May 3, 1954?

Did you answer that last part first? The subpoena was served after May 3, 1954, wasn't it?

Yes.

And at the time the subpoena was served you had this letter, didn't you, Exhibit A?

Yes, I did.

Now, my question is: Did you have a conversation with Mr. Gordon concerning the second subpoena? I will read it.

Understand Mr. Byrum will testify that he is Deputy Assessor, Auditor-Appraiser, for the County of Orange, in charge of marine and personal property appraisal; that in this capacity it is his duty to supervise the work of Mr. Roy E. Hallberg who has been instructed and is required to report to work each day of the week Monday through Friday at the hour of 8:00 a.m., and to remain on duty until 5:00 p.m.; that he is required to spend one-half of each day in the office and one-half of the day in the field, performing his duties as an appraiser; that Mr. Hallberg commenced performing his duties on Monday, December 7, 1953, and has been paid [120] each work day through February 1954 at a monthly salary of \$355.00 per month."

Did you have a conversation with Mr. Gordon?

Yes, sir.

(Testimony of Louis B. Byrum.)

Q. What did you state to Mr. Gordon?

A. I told him that the contents of this letter were incorrect.

Q. You stated that to him at the time the poena was served?

A. I told him that at the time.

Q. Did you have a previous conversation, in 10 days or more, or approximately, before the letter was shown to you?

A. I had a previous conversation with Mr. Winthrop—I don't recall the exact time.

Q. Did you at that time tell Mr. Winthrop that Mr. Hallberg's hours were from 8:00 in the morning until 5:00 in the afternoon?

A. I did not.

Q. What are his hours?

Mr. Whyte: Objected to as having already asked and answered; gone over several times.

The Court: Overruled.

The Witness: The question is what are his hours?

Q. (By Mr. Enright): Yes, work days.

A. There is no definite hours set up in the ordinance.

Q. What hours do you report to work?

A. I happen to be supervising appraiser and the office opens at 8:00, but many times I am not there. If I have other business I don't go near the

ony of Louis B. Byrum.)

That time do you leave the office when you
king?

sometimes leave at 6:00 o'clock. I some-
ve in the afternoon at 4:00 o'clock, or any

ow many men or persons work under your
there? A. Some approximately 60.

?

es. That could vary one way or the other,
is approximately the number.

Will you again state the nature of the work
had instructed Mr. Hallberg to perform?

Mr. Hallberg is an auditor-appraiser.

Will you now explain what are the duties of
or-appraiser under your direction for the
of [122] Orange, and Mr. Hallberg in par-

What his particular duties are?

es.

is duties are to call upon the various indus-
the county, to prepare assessment state-
r them, to assist them in preparing assess-
tements.

Does he have any office duties at all?

No definite duties, no.

What does he do when he works in the office
ounty of Orange under your direction?

He comes in and possibly completes his work

(Testimony of Louis B. Byrum.)

Tell me how he completes his work in the

A. Well, do you want me to go through complete assessment procedure?

Q. Yes, if that is what Mr. Hallberg does. participates in it, would you explain what his are?

A. He obtains from the taxpayer—he obtains property statement and then he figures the assessment values, and then transfers that to a permanent record.

Q. And that is a part of his duties, to make this permanent record of the County of Orange?

A. Right. [123]

Q. And how many hours a day does he spend in performing this office, these office duties?

A. I can't answer that question.

Q. Have you no knowledge of how many hours a day he spends in the office during this period?

A. I don't know. It isn't definite.

Q. But you do observe him there, don't you?

A. That is right, but I couldn't answer that. I do not know.

Q. Well, how many men perform the same type of duties that Mr. Hallberg performs, that you have under your direction?

A. We have two that are performing the same type of duties.

Q. Now, have you ever done this appraisal yourself? A. Yes, sir.

ony of Louis B. Byrum.)

ally open during office hours, aren't they?

Whyte: Objected to as leading and suggested argumentative. This witness is called by defendants in this case, and I suggest that stand by questions which are to elicit direct
ny.

Court: I think he should have full privi-cross [124] examination of this witness. I now that he is strictly adverse. Mr. Enright, at least living up to expectations, it doesn't you to full impeachment, but I think it does you to a rather full cross examination, so allow it.

Witness: I don't remember the question.

By Mr. Enright): Now, I will reframe the n. You have done assessment work such as llberg is performing for the county, haven't the past? A. Yes, sir.

and does that involve going out to the places ness situate in the County of Orange and at the personal property there?
t does.

n their places of business? A. Yes.

t is personal property assessment, isn't it?
am in charge of the personal property divi-s, sir.

That is the type of work Mr. Hallberg is

(Testimony of Louis B. Byrum.)

ing the hours of 8:00 in the morning until approximately 5:00 in the evening? [125]

A. They are not.

Q. They are normally, that is, normally you do the work of assessing?

A. May I ask you a question?

Q. Surely.

A. Bullock's don't open until 10:00 o'clock they?

The Court: Mr. Witness, we can't get into arguments. You can ask questions if it is necessary for you to understand.—

The Witness: The point was that I was asking—

The Court: —the question put to you. I take that as an answer to the effect that you are governed somewhat by the hours of availability of the persons conducting the businesses whose value your office appraises, is that right?

The Witness: That is correct.

Q. (By Mr. Enright): Now, the offices or places of business in Orange County are normally available for assessment work during the hours from 8:00 to 5:00 p.m.?

A. Will you restate that question? I didn't understand it.

Mr. Enright: Will you read the question?

(The question was read.)

ony of Louis B. Byrum.)

al work is done during the business day,
? [126]

Witness: Yes, but some of them, your
are not open at that time of day. Do I make
?

Court: Yes. I am trying to appreciate what
ses would not be open during the daytime,
arly in Orange County. We don't think of
night spot. Offhand, can you name any man-
ing industries that work three shifts down
t Santa Ana at this time, that work around
ek and have the executive offices open 24
day.

Witness: No, I don't know that.

Court: The witness has said that work is
ily done during the business day. The court
ands the business day to mean some time
a sunrise and sunset, as an ordinary thing.

(By Mr. Enright): Now, ordinarily, you,
rum, do not go out at sunrise, around 6:00
morning and go into these executive offices
records of these personal property owners,
assessment work, do you?

No, I do not, not at sunrise.

It is normally after 8:00 o'clock in the
g?

It is normally after 8:00 o'clock, yes, sir.

It is before 5:00 o'clock when the normal

(Testimony of Louis B. Byrum.)

A. Well,—

Q. Isn't that right, Mr. Byrum?

A. Yes.

Q. And normally Mr. Hallberg performs eight-hours' duties between 8:00 in the morning 5:00 in the evening, isn't that right?

A. That is not right.

Mr. Enright: No further questions of this
ness.

The Court: Well, does Mr. Hallberg's work include the preparation by him of reports and documents of one kind and another for your office?

The Witness: Yes.

The Court: Is that work of preparing forms one that requires a small amount of his time or does it require a large amount of his time?

The Witness: I would say that the preparation of the data requires about as much of his time as the actual interview in the business.

The Court: Do you have some rules or regulations of your office where that preparation of data shall be done?

The Witness: We do not.

The Court: Ordinarily a person having a problem with the assessor's office can walk into the assessor's office and find someone back of the counter who is available to answer questions or give office assistance, sir. Is that true of [128]

offices?

ony of Louis B. Byrum.)

being the person behind the counter, to such services?

Witness: He does not.

Court: Well, what are the duties that he in the office?

Witness: His duties within the office are to his assessment of the business. In other to make permanent records and transfer to nt records, and he may do that in the office ay do it at home. He may do it anywhere. n't necessarily have to do it at the office.

Court: Is he on a quota basis?

Witness: He is not.

Court: Was he at any time within the past

Witness: On a quota basis?

Court: Yes, turning out a certain amount. For instance, we judges are on a quota they assign us a certain number of cases. e to handle a certain number.

assign your deputy assessors, such as Mr. , a certain number of cases or assessments n areas?

Witness: Yes, I turn over definite cases to 9] Hallberg.

Court: Now, did he during the time, beginning December of 1953 and extending through f 1954, turn in a full quota of work?

(Testimony of Louis B. Byrum.)

his employment with you, in order to dispatch quantity of work? Do you understand what I

Would a man have to work about 40 hours a week in order to do that much work?

The Witness: It would seem so, yes.

The Court: Do you have any reason to believe Mr. Hallberg didn't devote that amount of time to the discharge of his duties with you?

The Witness: I have no reason to believe otherwise. We were aware of the fact that he had other commitments.

Mr. Enright: I move to strike the statement as not being responsive to the question.

The Court: It wasn't responsive to any question. It is something which could have been brought out by a proper question, though, so I will stand.

Q. (By Mr. Enright): If one were to call extension 2-6211 and ask for Extension 355 he would reach Mr. Hallberg?

A. You would reach my desk, my phone.

Q. Kimberly, I think it is.

A. That is right. You would reach my phone at my desk.

Q. Do you permit the deputy assessors to remove the permanent records of the County of Clark away from the office to their homes?

A. I might explain that in this way: We have what is known as a fee sheet, real estate

ny of Louis B. Byrum.)

red to a permanent roll, which never leaves
e.

court: Counsel, just for your information,
point out to me, if I am in error, wherein
error, but I think the point has been pretty
de here that the County of Orange had a
upon Mr. Hallberg for 40 hours a week.

understand this witness' testimony, that 40
as served by erratic time. I think it makes
ence whether, for the purpose of this case,
llberg did the work at home or if he did it
office. He was spending 40 hours a week
ange County, which would show that 40
week, at least, were not being devoted to
es of this Receivership.

Enright: Yes. At a rate of pay of \$355.00

court: And that he was earning \$355.00 a
[I think those points have been pretty well
he [131] important thing here is how shall
considered in the fixing of his fee?

Enright: I have no further questions on the
bject matter.

By Mr. Enright): Tell me, you didn't em-
. Hallberg, did you?

do not employ them, no.

id you have any conversation with him con-
the terms of his employment before he was

(Testimony of Louis B. Byrum.)

Q. Was it a week or 10 days before he commenced to work? A. Yes.

Q. That would be in the latter part of November?

A. This particular conversation that I had with him was as a result of examinations. In other words, I talked to 15 people who took this particular examination, and I wouldn't say I definitely talked to him about a permanent appointment at that time, because I hadn't interviewed the others. If that is what you are trying to bring out.

Q. I am trying to fix time, first, Mr. Byrum. When was the examination given?

A. I can't remember that, really. [132]

Q. Was it 30 or 60 days or 90 days before November 7, 1953?

A. I conducted so many examinations at that time I don't really—there are several examinations conducted.

Let me explain a little bit. You see, we employ about 40 seasonal people, and these examinations were conducted from time to time, and I cannot tell definitely when this one was conducted.

The Court: Is Mr. Hallberg an employee on a seasonal basis?

The Witness: He is a permanent employee, sir.

Mr. Enright: I didn't hear the answer. Will you read it?

ony of Louis B. Byrum.)

Enright: That is my understanding.

Witness: Yes.

By Mr. Enright): In any event, there were
several persons interviewed by you concerning
the particular position held now by Mr. Hallberg?
Yes, sir.

And among those 15 persons one of them was
Hallberg? A. Yes, sir.

And at that time you had a conversation
with [133] Hallberg, did you, concerning his
employment?

Yes, concerning the employment.

Of Mr. Hallberg?

He hadn't definitely been selected at that

Was that the time you were advised by him
of previous commitments?

I don't know.

What did he say about his previous commit-
ments to you?

At the time I called him for work, I know
the time he told me about previous commit-

What did he say?

When I called him to go to work, I believe it was,
I don't know the day—wait a minute. It was either Wednes-
day or Thursday of the—before the 7th of Decem-
ber. I called him.

(Testimony of Louis B. Byrum.)

Q. And that is all that was said at that time? He did report for work on Monday, the 7th, did he?

A. That is right.

Mr. Enright: I have no further questions of this witness.

Mr. Whyte: I have one or two questions of Louis B. Byrum.

Mr. Enright: May I offer in evidence Exhibit 134 for [134] identification. That is the letter the witness admitted receiving.

The Court: Admitted.

(Said document marked Defendants' Exhibit 134.)

A was received in evidence.)

Mr. Whyte: Just for the purpose of the record, I would like the record to show that this is an attempt to impeach Mr. Byrum with respect to a matter which is wholly immaterial.

I registered an objection yesterday to this line of testimony, as to what Mr. Hallberg did for the County of Orange for the time he spent there. I cause what he did down there doesn't make any difference in so far as his compensation for the receivership is concerned.

If he did the things which are alleged in his petition and spent the time that he says he spent and performed the duties which are enumerated and set out in his petition, and testified in his deposition, then, in my opinion, it doesn't make any difference what he did on the side, but

ony of Louis B. Byrum.)

Court: Of course, he is entitled to compensation for what he did. But in order to know to what extent we are required to know how much compensation on Mr. Hallberg's time this Richman trust

Whyte: I realize that, your Honor has ruled [35] I am not objecting.

Court: All right. I am just letting you know that I do think it is proper for that purpose. For instance, Mr. Hallberg had held this position in the County of Orange for 10 years, and then I asked him to take a receivership and he left the County of Orange because the receivership was taking up all of his time and would not let him come here and say, "I worked 20 hours a day on receivership," that would entitle him to a certain compensation than a business which would require full time employment.

Whyte: May I proceed?

Court: Yes.

Cross Examination

By Mr. Whyte): I understood you to say, Mr. Byrum, that the preparation of the data with reference to the appraising and assessing took about the same time as the actual appraisal work in the office, is that correct?

(Testimony of Louis B. Byrum.)

necessary towards appraisal work at his home during the evenings?

A. I couldn't answer that question, I don't know.

Q. Are you acquainted with the fact that last night Mr. Hallberg visited a large restaurant in the County [136] of Orange after dinner, in connection with the performance of his duties at your office?

A. I am aware of the fact he did.

Q. Yes.

A. He turned in a report on it this morning. I can't swear that he did it last night, but a report was turned in this morning on that business.

Q. Did the report show that the work was done some time after 5:00 o'clock last night?

A. I wouldn't be able to swear to that.

Mr. Enright: I object on the ground that the report is the best evidence of what it states.

The Court: Objection sustained.

Mr. Whyte: The facts will speak for themselves because Mr. Hallberg was in court all day yesterday. The court can draw its own conclusion as to when he performed that work.

Q. (By Mr. Whyte): You mentioned, in connection with the preparation of the data necessary for Mr. Hallberg's work, there is no requirement that that need be done in the office, is there not?

A. There is not.

ony of Louis B. Byrum.)

about December 7, 1953. Did he tell you at
e that he had prior commitments with ref-
to a receivership in the [137] Federal

e did not, not that he had a receivership.
me that he had prior commitments, other
at he had to clear up.

What did you say to him? Did you tell him
t was perfectly all right?

might just—you want me to answer the
? I would like to say that quite often
u employ a person——

nright: I move to strike what they quite
. The question is what was the conversa-
that time.

Witness: I don't remember.

court: Motion granted.

By Mr. Whyte): You answered you don't
er, Mr. Byrum?

es; I don't remember.

court: May I ask one question? Is Mr.
g now required to devote his full time, or,
t another way, is he now allowed at this
have outside employment? Do you under-
hat I mean?

Witness: To have outside employment when
rking for the County of Orange?

court: Yes

(Testimony of Louis B. Byrum.)

offices which require persons taking employment there to not have any other employment. That some municipalities which have those requirements with respect to peace officers and so on. They have to have their full energy devoted to the requirements of the position.

I wondered if this position which Mr. Hallberg has has that requirement as of this time.

The Witness: I don't remember just what the terms of the county ordinance in that respect are.

Mr. Whyte: I have no further cross examination.

The Court: Redirect?

Mr. Enright: No, I have no questions.

The Court: May this witness be excused?
(Witness excused.)

Mr. Enright: Mr. Hallberg.

ROY E. HALLBERG

called as a witness in his own behalf, having previously duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Enright): I direct your attention to the oath of Receiver constituting a part of the files in this action, and to the fact it is filed December 2, 1953.

That is the day on which you took your

ony of Roy E. Hallberg.)

That was a Wednesday before December 7,
er, we can check it from the calendar, of
think the court takes judicial notice.

Had been out directing the managers of the
ent houses before you signed your oath on
r 2, 1953, hadn't you?

We had gone out to advise them that the
ment was going to be invested in a Re-

ou did more than advise them, you took
ey from two or three of the five apartment
s? A. Two of them, yes.

id you tell his Honor, Judge Tolin, at the
t filed your oath here on December 2, 1953,
esday, that you were to become a perma-
mployee of the County of Orange, commenc-
day, December 7th?

didn't——

Whyte: Objected to as immaterial, irrele-

court: Overruled.

Enright: Will you read the question?

(The question was read.)

Witness: I knew nothing about it.

(By Mr. Enright): You heard the testi-
Mr. Byrum——

t the time we filed that—— [140]

arden me just a moment Mr. Hallberg

(Testimony of Roy E. Hallberg.)
cember 7th, that he talked to you concerning going to work on the following Monday?

Did you hear him testify to that?

A. I did not hear him testify that was nesday morning before I went to work.

Q. Tuesday or Wednesday, then, before went to work? A. No.

Mr. Enright: I will stand on the record.

Q. (By Mr. Enright): You did have a co sation with him before you did go to work, d you?

A. I had a conversation before I went to yes.

Q. You went to work on December 7, 1953, that clear? Can we agree on that?

A. Went to work where?

Q. County of Orange.

A. No,—I am sorry. December 7th, yes.

Q. Now, that was on a Monday, wasn't it?

A. That was on a Monday, correct.

Q. Now, the previous week you had a co sation with Mr. Byrum, as he testified to her the witness stand, [141] didn't you?

A. That is correct.

Q. Now, directing your attention, Mr. Hall to your employment previously to going to wor the County of Orange, you were employed d the period of September 1952 to October 195

mony of Roy E. Hallberg.)

Your rate of compensation was \$350.00 a

A. That is correct.

And that company was engaged in the business of manufacturing plastic fishing poles?

That is correct.

Before going to work for that company you were employed by the Morgan Construction Tool Company?

A. Yes.

For the period of May or June 1951 through December 31, 1951, or through December of 1951, isn't that correct?

A. That is correct.

Your rate of compensation there was \$100.00

That was not compensation, that was a drawing account.

It was a drawing account as a result of your having invested \$18,000.00 in the purchase of stock in the Morgan Construction Tool Company?

Both the president and I took a hundred dollars a week as a drawing account.

You invested \$18,000.00 in the company because you mentioned taking this drawing account, is that right?

A. I don't see—

Court: Was the drawing account against the assets of the company or against salaries, or commissions, or what?

Witness: It was mostly against possible profits of the company.

(Testimony of Roy E. Hallberg.)

isn't that right? A. That is correct.

Q. Do you know a G. T. Gilliam of Alta California? A. I know of him.

Q. Is his business that of selling his service as an efficiency expert? A. That is correct.

Q. Did you, before going to work with Mc Construction Tooth Company, work for a period of time or attempt to work for a period of time with Mr. Gilliam, in carrying on his business of consulting with business concerns?

A. My connection up there was more or less as a helper and—or giving him aid. I did not do any of the actual work out in the field. You asked that question before. [143]

Q. In your deposition, and you did not remember it at that time?

A. I said no, definitely not; I didn't know you asked me.

Q. Perhaps then, my words did not convey the exact act or thing you did. Now, will you explain what you did do, if that will aid you in answering the question? I do not want to limit you by a question.

A. The assistance I gave him was organizing a group of individuals to help and assist him in the actual work. At that time I was not capable of sustained work.

The Court: You had some physical difficulties

mony of Roy E. Hallberg.)

er months on end I was in bed, and the times
p were limited.

a't do any physical work, and finally had an
on.

(By Mr. Enright): Now, during that period
that you were carrying on the activities, as
ve described them, with Mr. Gilliam, you
d a lot known as 85 Glen Summer Road in
na, at about that time?

If I remember correctly, I had the lot.

Well, you acquired the lot at 85 Glen Sum-
oad on May 29, 1947, being Document 901
official records of the offices of the County
er's office? Does that [144] help you at all
g the date?

Yes, that is approximately right.

Did you build a house there? A. I did.

And you sold that house on February 19,

A. Approximately.

Now, during that period of time you also
d a lot at 90 Glen Summer Road on Octo-
1947, being Document No. 146 of the official
of the County Recorder's office?

That is correct.

And you sold that lot and the house you
n it on June 17, 1952?

That is approximately correct, yes.

Now, before acquiring the lot on April 29.

(Testimony of Roy E. Hallberg.)

Q. And that 13-year period covered the from about 1932 or '33 to 1947?

A. That is correct.

Q. And your duties with the Garrett Company pertained to the marketing of wines?

A. That is correct.

Q. In no manner did your duties to the Garrett Company [145] pertain to the operating of apartment houses?

A. No; that is correct.

The Court: What was your compensation?

The Witness: Well, the earnings ranged about \$40,000.00 a year net.

The Court: What do you mean by "net"?

The Witness: After I paid my expenses whatever other expenditures had to be made.

The Court: You don't mean after taxes?

The Witness: No.

Q. (By Mr. Enright): You terminated that employment and came to California about March 1947?

A. That is correct.

Q. And this \$40,000.00 a year you refer to monies you received in the sale of wine or directly the sale of wine in and about the New York area?

A. Directing the sale of wine throughout the New York area, Metropolitan New York area in New York State.

Q. Including Brooklyn?

A. Well, most people don't think Brooklyn is part of the United States.

ny of Roy E. Hallberg.)

at houses, did it? A. Right. [146]

ne first apartment house that you had any
n with in California was at 509 Fair Oaks
d, an apartment house in Pasadena?

never had a building at 509.

09. I misread my notes. Is that right?

at is correct.

ou acquired that house December 20, 1949,
deed recordation of Document 116, on that
official records of Los Angeles County?

at is approximately correct.

was a 14-unit apartment? A. 16.

ou yourself owned it, did you?

did.

nd you hired a manager? A. Correct.

our mother-in-law? A. That is right.

nd you disposed of that apartment house
mber 29, 1950, being Document No. 1037
official records of Los Angeles County?

pproximately that.

e for approximately 11 months you were
e an apartment house at that address in
a, California, or South Pasadena? [147]

at is right, yes.

ourt: Did you ever do anything with re-
the management of it?

itness: Well, we had a resident manager
t so far as the actual managing the per-

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): You ordered a things done on these 14 apartments during 14 months you had it? A. 16 apartments,

Q. In addition to the 85 and the 90 Glenmer Road and the 1509 Fair Oaks apartment you did acquire an unfurnished 4-family unit at 507 El Molino Street in Pasadena, California December 29, 1950, didn't you?

A. Approximately that time, yes.

Q. You and your wife jointly or individually or one of you owned that property alone, didn't you?

A. Well, I believe the record will state all the buildings were joint tenancies.

Q. Yes. And you still own that unfurnished family unit?

A. There is one apartment there furnished.

Q. Those are all the properties that are in Los Angeles County that you had had any connection with when you were interviewed by this committee?

A. In California? Yes.

Q. I said Los Angeles County. Because there are two down in Orange County, isn't that correct, Mr. Hallberg? A. Yes.

Q. Those are single residences and one is a duplex or triplex?

A. One is a triplex and the other is a residence.

The Court: The triplex is residential property.

The Witness: Yes, it is in a residential neighborhood.

mony of Roy E. Hallberg.)

Witness: No.

Court: Or for residence?

Witness: It is for residences. People live
. They are both furnished, incidentally.

By Mr. Enright): You moved to Orange
in 1952, didn't you? A. Yes.

And after moving down there, you built this
or single residence, which came first, will
plain that? A. Triplex.

And sold it, did you? A. No.

You still own it? A. Still own it. [149]

You built a single residence down there in
County then? A. Yes, that is right.

Now, you have recited, have you not, to the
our experience in dealing with real prop-
California, in answer to my previous ques-

A. Your previous questions, yes.

The only business address you had, since you
come to California, was the address of the
Construction Tooth Company in Pasadena,
you used during the period June or May
December 1951, isn't that correct?

directed all my mail to my home.

Well, did you advise his Honor before your
ment that you did have a place of business
Pasadena, a business address?

The address I used there was 509 South El

(Testimony of Roy E. Hallberg.)

Q. And that you represented to the court as having a place of business for you, is that right?

A. Well, it was an apartment house. I don't recall that I mentioned that as a business address though.

Q. I have reference to the statement made on November 30th of 1953, the date of your appointment, that it was [150] represented to the public by the court that you had a business address in Pasadena.

I assume you made that representation to the court, did you not?

Mr. Whyte: Objected to as calling for something that is outside the presence of this witness. He wasn't a party to any conversation between the court and yourself, Mr. Enright.

Mr. Enright: He was there part of the time. I will verify whether he was there at that time.

Mr. Whyte: I ask you lay a foundation here that he was present at any such conversation and knew something about it.

Q. (By Mr. Enright): Now, directing your attention, if I may step up to the witness stand and look at the transcript of November 30, 1953, at page 150 of the transcript, line 11, is where you answered the statement of the court concerning your qualifications, with the words:

“Mr. Hallberg: That is correct.”

Now, pursuing that transcript over to page

mony of Roy E. Hallberg.)

Enright: Read any portions you want. I enlisted a witness in my life.

I really wanted to fix the point in that transcript on that day as being on page 10, that Mr. Enright was a witness in the chambers of this court at that time. [151]

the representation concerning the business was later on in the transcript, your Honor. page 15.

Whyte: Well, if you are going to read into the record something standing alone, an answer by Hallberg, "That is correct," why, why don't you read the whole transcript, to show what he is saying, what "That is correct" has reference to? I am going to request there be read into the record the whole conversation, to show what Mr. Hallberg was answering.

Court: Mr. Whyte, I am going to consider what occurred at that time and place. I will read the transcript in connection with the matter now before me, before deciding the issue here.

I might also read some of the transcript of the original trial in this action, since this proceeding is supplementary to it, and one can pick up a great deal of information concerning the properties managed by the transcript of the trial of the case.

Whyte: Thank you, your Honor. I wanted to get before you in mind what Mr. Hallberg

(Testimony of Roy E. Hallberg.)

read all these things before deciding this. This isn't going to be [152] any precipitant action.

Mr. Enright: I am disturbed, your Honor, at the making of a decision involving the reasonable value of this witness' services based upon evidence that is not presented herein, pursuant to the petition and the answer to the petition.

The Court: Are you objecting to the court's considering the evidence which was presented at the trial of Tidwell vs. Richman?

Mr. Enright: Yes. I believe it would be proper. I seriously make that point. Otherwise, I do not know upon what does the court base its decision.

The Court: I will tell you what I intend to consider from the record of that case. That record shows somewhat the character of the properties which came into the receivership. And I intend to consider that.

That record shows what was charged by Mr. Richman for the management of those properties. It shows what experts, produced by Mr. Richman, thought would be a reasonable charge for the management of them. It shows what experts, called by Mrs. Tidwell, thought would be a reasonable amount, and it shows the general character of the property.

I think those matters I have alluded to must be properly considered. This proceeding cannot be

mony of Roy E. Hallberg.)

Enright: My point being this, your Honor: the court is to consider the evidence in the action, that it has just now stated, it would of course involve an examination into the qualifications of the persons involved in the management

Court: Well, that was open to litigation in the action and to a certain extent it was involved in the main action. No one waived their rights of cross examination at the time of that

built up a transcript of several hundred pages. I don't propose to read it all, but I am going to refresh my memory on the parts to which I have referred in general terms here.

Enright: I had not quite completed my statement, your Honor.

Court: All right.

Enright: My point was that the qualifications of those particular witnesses in their experience as property managers in this specific case alone was presented. And that would involve the whole transcript or the whole of the trial of the case. I am afraid.

I submit it would be improper to go beyond the record we are developing here.

(By Mr. Enright): Proceeding, now, Mr.

(Testimony of Roy E. Hallberg.)

Q. So you were there in the chambers at the time you gave this answer? That is correct?

A. I was, yes.

Q. You remained in chambers after that answer, until at least myself left the chambers because I was engaged in another trial?

A. So far as I know, I did.

Q. Now, directing your attention to page 1 of the transcript, commencing at line 3 through line 18, did you make the following statements:

“Q. (The Court): Yes. Now, if you gentleman wish to consult with the Receiver whom I have indicated will be appointed, we will provide one of the rooms adjacent to the chambers for such consultation, so that you may orient him to immediately pending problems which you feel might enter into the employment he is about to assume.

“I know you have another engagement, Mr. Hallberg, right, but you might take just long enough to make an exchange of names, addresses and telephone numbers and the like. [155]

“I am going to suggest to Mr. Hallberg, who I think has a place of business somewhere around here.

“Mr. Hallberg. It is in Pasadena.

“The Court: And you live at Corona Del Mar.

“Mr. Hallberg. That is correct.”

You did make those statements at that time?

A. Yes. I was referring to 509 South El Monte.

The Court: Did you have any business with

ony of Roy E. Hallberg.)

Court: —management of that building?

Witness: The apartment building.

By Mr. Enright): That wasn't an apartment building, was it, a 4-family unfurnished flat?

It is usually called an apartment building.

Unfurnished, is that right?

One apartment is furnished.

One unit is furnished. And there are four units in that building at 507 South El Molino?

That is correct.

You call that an apartment?

They certainly do.

All four of them were rented on November 1, 1930, weren't they? [156]

That is correct.

Were the tenants were paying you rent?

That is right.

And you call that your place of business, is it?

I had access to a telephone there and also I had mail there.

Now, directing your attention to your experience in Chicago, concerning the operation of property, was it in the year 1930 or '31, isn't that correct?

A. '31, yes; 1930-31.

It was for a period of one year?

More or less. I think it is more. But I am not sure. That is quite a few years ago.

(Testimony of Roy E. Hallberg.)

Q. Mr. Eich was a bondholder of certain bonds issued by a bank at Chicago, isn't that correct?

A. He was a bondholder and receiver.

Q. I hadn't reached the receivership yet when Mr. Hallberg. Now, the bank became defunct or did it? Isn't that right, and Mr. Eich, by virtue of his bonds, took over some of those properties of the bank, which were securing his bonds, isn't that correct?

A. That is correct. He took them over as receiver, though.

Q. You had never acted as a Receiver at any time, yourself, until this court appointed you as Receiver, is that correct?

A. That is correct. I was handling the properties in receivership.

Q. Did you at any time advise this court before your appointment or on December 2nd, 1900, when you took your oath, that you contemplated rendering an eight-hour day's service to the Court in the County of Orange?

A. I didn't contemplate rendering service in the County of Orange at that time.

Q. The question is did you advise the court of your intention or contemplation of going to work for the County of Orange?

Mr. Whyte: Objected to as calling for, assuming facts not in evidence. The witness has testified he didn't contemplate going to work for the County of Orange at that time.

ony of Roy E. Hallberg.)

t thing, and I think you will allow that

Witness: I couldn't have told——

Court: You can just answer, did you or
ou?

Witness: No, I couldn't have. [158]

By Mr. Enright): You were appointed
r on Wednesday and went to work for the
of Orange on Monday, didn't you?

es. I had no knowledge of going to work for
ty.

Court: On the following Monday?

Enright: Yes.

Witness: No.

Enright: Following Monday, December 7th.
urt order here is December 2nd. He was
ed and took his oath.

By Mr. Enright): You never informed the
all at any time about going to work for the
of Orange?

didn't know I was going to work for the
of Orange.

did you inform the court after you went to
r the County of Orange?

ot that I recall.

n fact, you had told no one that you were
g eight hours a day as a part of your em-
t at the County of Orange until your depo-

(Testimony of Roy E. Hallberg.)

(The question was read.)

The Witness: I would like to have you that [159] a little differently. Will you state a little differently, please?

The Court: You just answer that the best you can. If it is an incorrect proposition, you clean it up.

The Witness: I will have to ask——

Mr. Whyte: You have a right to explain your answer, Mr. Hallberg. Answer the question as plain, if necessary.

The Witness: I will have to ask the reporter to please read that again.

(The question was re-read.)

The Witness: That is correct, so far as I know.

Q. (By Mr. Enright): At the time you were requested to act as Receiver in this matter before the court, you had then intended to delegate most of your work to Miss Cosgrove, is that correct?

A. I had intended to delegate the housekeeping to Miss Cosgrove.

Q. Did you inform the court of your intention of delegating what you call housekeeping to your wife, Miss Cosgrove? A. No.

The Court: We have gotten away from the 1931 transaction. I thought you were going to stay while we were at the point, so we wouldn't have to return to it again. But, as I recall the evidence, it has not been gone into. [160]

mony of Roy E. Hallberg.)

Witness: I was compensated on a basis dependent upon the rents received from the various properties. And I don't recall what the amounts were.

Court: Can you recall approximately what annual income was from that source during the time that you occupied that position?

Witness: Your Honor, I just don't recall.

Court: Was that a full time employment?

Witness: Yes.

Court: Or did you have other—

Witness: No. I was working there full time on the buildings.

Court: Were the buildings exclusively apartment buildings, or did they include other types?

Witness: They included various types. There were apartment buildings, apartment hotel, one or two flats, three flats, a couple of bungalows—they were scattered all over the north side of Chicago and the west side of Chicago.

Court: How did they compare in type of construction—I don't mean all of them—but were there any that were comparable in some way to the class of buildings which were involved in the Richman properties?

Witness: Yes, there was one apartment ho-

(Testimony of Roy E. Hallberg.)

The Court: To which one of the Richman properties?

The Witness: I imagine that would be closer more along the lines of the Oliver Cromwell. It was in a fairly nice residential district and this was on the boulevard in the fair-income bracket neighborhood.

The Court: Were most of the apartment buildings in that earlier experience of yours building a lower class than were involved in the Richman trust?

The Witness: Not necessarily. I believe on the whole they were on a par. They were brand new buildings and they were out in new neighborhoods.

They were not in the fringe areas. They were substantial buildings, all of them.

Q. (By Mr. Enright): There was only one of the properties that was an apartment hotel, that right?

A. There was only one large one. There were several smaller ones. I recall,——

Q. Your principal duty was trying to collect rents from those people in 1931? A. No.

Mr. Whyte: Would you finish your answer? Do you recall what? May the court please allow the witness to finish his answer? [162]

The Court: Finish the answer.

The Witness: We had several smaller buildings, probably had 10, 12 little furnished apartments.

ony of Roy E. Hallberg.)

include only collecting rents. It was a com-
management.

(By Mr. Enright): That was the problem
though, wasn't it, collecting rent?

That was one of many problems.

Enright: Now, is that all your Honor de-
o ask concerning Chicago, bondholder's

Court: That is all I had in mind. I am not
ed in the bondholder's rights.

interested in the type of service which this
ndered there, what his experience was.

(By Mr. Enright): Now, directing your at-
to Mrs. Hallberg's experience. She gradu-
om the University of Minnesota, is that

A. That is correct.

During the period 1937-1942 she carried on a
s which you describe as investment counselor
York, is that right? A. That is correct.

And she had two clients, to wit, a Dr. Austin
nd Cox. [163]

Well, I am not familiar with the names of
nts nor the clients themselves.

Well, might I ask you——

As I understand it, that is correct.

Yes. That is Mrs. Hallberg's statement, isn't

I say, as I understand, that is correct.

(Testimony of Roy E. Hallberg.)

The Court: If he is using the deposition, using it as notes. What the question was, was whether she had two clients by those names.

Now, that is what I understood it to be, and that would be perhaps foundation for inquiring as to the nature of the services rendered them.

Now, I don't know how many clients the deposition might show, and I don't care.

Mr. Whyte: Very well. If your Honor has maintained the impression they are only two of the clients, I am quite satisfied. Thank you.

Q. (By Mr. Enright): Do you know whether or not she had any clients in addition to those I named? A. I don't know.

Q. So far as you are concerned, those are only two clients she had, is that right? [164]

A. I can't answer that, because I don't know.

The Court: Well, Mrs. Hallberg is present in the courtroom. The court will ask her to be available as a witness here, if you want to interrogate her into it.

Q. (By Mr. Enright): Now, I take it she came to California with you after—she terminated her investment business counseling in 1942. I suppose World War II stopped it, is that it? You don't know why, but she did terminate, is that it?

A. That is right.

Q. She came to California with you in 1945?

A. That is correct.

ony of Roy E. Hallberg.)

ou know, was decorating your home in New

he happens to have taken a course and some
ith an institute in New York, of art and
I do know that.

What is the name of this institute of art and
hat you know of?

I will withdraw the question, if by these 60
or so you have not remembered.

ou know anything else about this training
concerning apartment properties, other
at you have stated as of that time—— [165]
he has had that training in it. She has been
ed in it for a good many years, and she has
herself to be quite capable.

Enright: I move to strike “she has proven
to be quite capable.”

Court: Granted.

By Mr. Enright): Now, after coming to
ia, her experience in so far as residential
es are concerned, was, shall we say, the
of the color and the decorations of 85 Glen
Road, that one?

wouldn't say “mixing colors”.

he figured out the color scheme, is that it?
olor scheme, draperies, complete harmony
s throughout the house.

he same for 90 Glen Summer Road?

(Testimony of Roy E. Hallberg.)

A. There was a swimming pool.

Q. Much better than the La Loma Apartments or of these apartments mixed up here?

A. It is a matter of opinion.

Q. Give us your opinion.

A. I lived over in Pasadena.

Q. You were managing, you undertook to manage in [166] excess of \$2,500,000.00 of apartments here. Is it because of this Glen Summer Road experience, that it qualified you, is that your opinion?

A. Of course not.

Q. It didn't help you at all or help her managing these apartments, did it?

A. Just additional experience.

Q. Now, the additional experience was the 16 units at 1507 Fair Oaks, is that the next experience she had?

A. 16 units again.

Q. 16. Pardon me. For the 11 months, though?

A. She assisted me there quite materially.

Q. And the next experience would be the 4 units at El Molino Street?

A. Yes.

Q. And the single residence and triplex in Orange County?

A. Correct.

Q. Now, in addition Mrs. Hallberg has had experience as an employee of the County of Orange, too, hasn't she, in the hospital?

A. Oh, yes.

Q. When was that?

A. Oh, I think that was during the summer

ony of Roy E. Hallberg.)

67] Hallberg's business experience, other
at she does hold a real estate broker's li-

Whyte: If you can recall, Mr. Hallberg.

Enright: Thank you, Mr. Whyte.

Witness: Well, her business experience with
nty of Orange took in quite a bit of account-
k there and supervising of accounting.

By Mr. Enright): That was in 1953?

es.

The next subject, Mr. Hallberg, will be the
of the Oxyaire. You have that subject in

A. Yes.

Court: Do you want to take the morning
Mr. Enright, or do you want to go straight
ugh?

Enright: I believe I could organize it and
e it, but if the witness wants to take a short

Court: We will take a brief recess.

Short recess taken.)

By Mr. Enright): Among the files that
rned over to you by Mr. Richman on or
ecember 3 or 2, 1953, was one involving the
lution Control, Inc. contracts?

That is correct.

Now, I have shown this letter dated Decem-
1953, to counsel during recess. I want to use

(Testimony of Roy E. Hanberg.)
an authorization from the County of Los Angeles Air Pollution District concerning installation of pollution control facilities at one or more of the apartment houses? A. That is correct.

Q. Now, you next received, did you not, engineering drawings specifying the equipment that was to be installed by the Air Pollution Control, Incorporated? A. That is correct.

Q. Now, after receiving these files pertaining to the Air Pollution Control, authorization or order, you turned the files over to your attorney, Whyte, about December 24th?

A. That is correct.

Q. 1953. Did he then give you an opinion, sometime in December 1953, as to what were your duties as a Receiver with respect to the orders of the Air Pollution Control authority of the County of Los Angeles?

A. Yes, by the end of December he had given me that information.

Q. What was his opinion?

A. He stated that the contract signed was perfectly valid, to go ahead. [169]

Q. Now, on January 13, 1954, or within 24 hours after that date, you were informed by your agent, I assume, that a citation had been issued by the Air Pollution Control District, Los Angeles County, concerning the apartment houses, is that correct?

mony of Roy E. Hallberg.)

I think it was 418 South Normandie, the
ell.

Whyte: Speak up, Mr. Hallberg.

Witness: I am sorry.

Whyte: What apartment house was it?

Witness: Oliver Cromwell.

By Mr. Enright): And upon receiving that
, was your next act that of phoning to the
olution Control, Inc.?

That is correct.

You kept a diary, did you not, of some of
activities as Receiver? A. Definitely.

And you have a copy of it there?

Yes.

Now, this diary consists of notations you
about the time the occurrences are reported
diary? A. That is correct.

And it consists of notations made after con-
n [170] with your wife at home in the
, is that right?

No. On this one, I think I was——

Most of the entries in this diary are of that
are they not?

Not all of them, no.

I didn't ask you about all of them. I just
find out the method of keeping this diary.
as generally in the evening when Mrs. Hall-
turned from Los Angeles that you would

(Testimony of Roy E. Hallberg.)

we both returned home. It is a composite of work, for the most part, that was accomplished during a particular day.

Q. And it does not reflect who accomplished the work? A. No, it does not.

Mr. Enright: I had two photostats made. If the witness desires to keep his own original, it is all right with me.

I would like to have a copy made a part of the record. What would be the convenience of copying and the witness?

Mr. Whyte: Only one copy was furnished. With the original and my copy of the deposition, if it is convenient to the court, I will surrender my own copy and make it a part of the record, since I am getting along as best I can [171] without one.

Mr. Enright: Mr. Hallberg has a copy.

The Witness: I have the original.

Mr. Enright: I will take the original, if that is your wish.

The Court: The regular legal course, in the absence of some agreement between counsel or otherwise, would be to have the original received in evidence.

Mr. Enright: I seek the convenience of the witness and his counsel as to whether I should take the original.

Mr. Whyte: May I interrogate the witness at this moment?

ony of Roy E. Hallberg.)

k which you desire to keep, Mr. Hallberg?

Witness: Everything in here pertains to
vities on the receivership.

Whyte: You have no objection then——

Witness: No, none whatsoever.

Whyte: It will have to be placed in the
files.

Enright: May it be marked next in order,
nts' exhibit.

: Defendants' B for identification.

Said document was marked Defendants'
hibit B for identification.)

Enright: I would like to offer it in evi-
as [172] I do not anticipate too many ex-

Court: I understood it had been received in
e.

Enright: Thank you, your Honor.

Said document marked Defendants' Exhibit
was received in evidence.)

H U K S D A Y

4-12 Capt Wm. Johnson office work
 10 did not arrive until 11:14 A.M.
 11 Pay Pension privileges on
 applications and to in Brooklyn
 and acts methods. Stayed
 12 with Mr. Johnson until 2:30
 stopped payment on Mr. Dallas
 check on Com. not correct
 Bill made out to Hutchinson (Empkiss)

10 Judge Tolson Card
 11 Rain's Court order
 12 to act as Quar
 per Johnson
 talent
 EVENING

Dec. 1

Tuesday

12/1

Friday

9 Met Mr. Dallas went over
 10 insurance policies. Expense
 11 given name of person id
 12 arranged for office at Am
 13 Cornwell's place - made
 14 calls on all people collect
 15 rents & inspecting & making
 16 made deposit at Union
 Bank
 EVENING

10 Met John White
 11 And started
 12 for transfer of
 13 funds and
 14 to prevent any
 15 unauthorized
 16 payments
 17 Mr. Bank for
 18 started
 19 some and collected

12/2

Wednesday

12/5

Saturday

Sunday

9 Arranged for
 10 City of New York & White as
 11 to act as Quar
 12 at City of New York
 13 exchanged - 75000
 14 fidelity deposit Co
 15 1/2 Md. @ 500%
 16 Johnson in by
 17 approved & sent to
 18 John begins
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9 Arranged for
 10 Judge Tolson
 11 as Secy
 12 to act as Quar
 13 approved
 14 exchanged - 75000
 15 fidelity deposit Co
 16 1/2 Md. @ 500%
 17 Johnson in by
 18 approved & sent to
 19 John begins
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EVENING

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EVENING

EVENING

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EVENING

EVENING

EVENING

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Walter & me

Time with Mrs
Coyne

W. Connolly

Evening

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M O N D A Y
 3 visited friends
 10 checked with
 11 K. Brown painter
 12 10:30 - 11:30
 T H U R S D A Y
 2 checked with Aunt
 3 W.A. 11:19
 4 Explained to G. Brown
 5 Explained to G. Brown
 6 J. M. Faint + Selection

E V E N I N G
 19
 T u e s d a y
 9 Picked up Ramp. car
 10 at Yada
 11 Shopped Linen
 12 People's

F r i d a y
 9 Remade made
 10 Chud out 2:45
 11 W.A.
 12 Chud out 2:45
 11 Chud out 2:45
 12 Chud out 2:45

S a t u r d a y
 9 Chud out 2:45
 10 Chud out 2:45
 11 Chud out 2:45
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S u n d a y
 9 Chud out 2:45
 10 Chud out 2:45
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<p>Evening</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p>	<p>Evening</p> <p>11</p> <p>12</p> <p>13</p>	<p>Evening</p> <p>12</p> <p>13</p>	<p>Evening</p> <p>13</p>

M	10	From Shatto collected	2	Phone etc	10	
O						
N						
D	11	Deposits made	3	O.C. Duncan	11	3
A				with Mc Connell		
Y	12	Worked on Payroll	4	re procedure	12	4

16

Evening

17

Evening

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U		our problems		Re. Refrig		
E	10	and gets	2	John Langherty	10	2
S						
D	11	Child on Mc Connell	3	Trade Apprais	11	3
A		and classes		F.M. Check		
Y	12	Met Pentec at	4	Macan	12	4

Evening

18

Evening

W	9	F.M. Chel on	1	Saturday	9	
E		painting made		Pool		
D		printed map	2		10	
N	11	Packed up at	3		11	
E		Bridge				
S	12	Sam Carter	4		12	
D		personnel				
A						
Y						

Evening

mony of Roy E. Hallberg.)

(By Mr. Enright): Directing your attention January 13, 1954, you made the entry that even did you not, as follows:

Received notice re: Oliver Cromwell incinerator
e V. P. said he would handle with authori-
rged him to get on our job. Said drawings
ceived."

Was your entry for that day concerning
Oxyaire matter, wasn't it?

Part of it.

Was there more? Read it, sir, if you will
Harrison"—Does that pertain to Roy Harrison
get them——"

A. "Reminded——"

"——with a letter (outlined contents for let-
ters that right?

A. That is right.

At that time the drawings were a part of
files, weren't they? [173]

They were a part of the files, but they
not supposed to me. Harrison had been in-
d to send them on.

Now, I call to your attention a letter dated
January 22, 1954. Does the reviewing of this letter
in your memory?

Wasn't until January 22, 1954, you did transmit
drawings to Oxyaire?

Witness: Will you read the question, please,
Reporter?

(Testimony of Roy E. Hallberg.)

out of that letter. The letter went out on that
Do you want to get this in evidence?

Q. (By Mr. Enright): Your next action concerning this situation by the public authority of this community, on that subject, occurred January 27, 1954, when you communicated your attorney, Mr. Whyte, that a criminal complaint had been issued. I don't think you have your notes, have you?

A. It is not in there.

Q. You didn't make an entry of that on that day. I would call to your attention Mr. Whyte's time sheet for January 27th, if he will make it available to you, and that might reveal you communicated with him on that day. [174]

A criminal complaint was then pending against Mr. Richman and your manager?

Mr. Whyte: If I may show the witness my time sheet.

Mr. Enright: Oh, certainly. I just want to get the facts as to the performance of this relationship.

Mr. Whyte: My time sheets shows Mr. Enright telephoned, "Call from Harrison re: problem involved in preparing Receiver's first report. Criminal citation for alleged violation of smog regulations".

The time sheet is dated January 27, 1954.

Q. (By Mr. Enright): Did you direct Mr.

mony of Roy E. Hallberg.)

Enright: Now, to complete the record, may I stipulated that on Friday afternoon at 4:50 January 29th, your office informed Mr. Richman's office he would be in criminal court on February 1st on this citation, the following Monday?

Whyte: If you will allow me to refresh my recollection from my time slips.

Enright: Certainly.

Whyte: My time slip for the 29th shows the following entries in regard to this smog control matter: Telephone call from Harrison re: Criminal citation for violation of smog regulations. Telephone call from Mrs. Hallberg re: [175] Efforts being made to dismiss criminal citation for violation of smog control ordinances. Telephone call to Mr. Hallberg of Air Pollution Control District re: Citation for violation of smog ordinances."

The incident you mention is not noted on my time slip, but I recollect that some time between 4:00 and 5:00 o'clock in the afternoon I telephoned, first, your office, and then, both your office and Mr. Richman's office. I was unable to locate either one of you, and I left a word at Mr. Richman's office that he was to appear as a defendant in a criminal complaint with reference to the incinerator at the Oliver Cromwell. The hearing was to be held the following day morning, February 1st, in one of the de-

(Testimony of Roy E. Hallberg.)

berg, instruct your attorney to instruct Mr. Richman or myself not to talk to Mr. Harrison concerning this matter? A. I don't recall.

Q. You discharged Mr. Harrison after this incident, didn't you?

A. It just so happened it came about after some time, yes.

Q. It just so happens you were informed Mr. Richman and I had gone out to see Mr. Harrison on the [176] Saturday, the 30th of January you knew that, didn't you?

A. I didn't know that until several days after, but I found out inadvertently or a roundabout way you had been out there.

Q. And shortly thereafter Mr. Harrison was discharged, wasn't he? A. That is true.

Q. You, I assume, relied upon the advice of your attorney—strike that.

Did your attorney advise you in any manner as to the criminal aspects of this citation issued on January 13, 1954?

A. I knew it was quite serious. I do not recall that I had any conversation with him about the criminal aspects of the situation.

Q. Are you limiting your answer, may I inquire to what you personally heard Mr. Whyte say to you, or are you including communications by Mr. Whyte to your secretary, Mrs. Hallberg?

A. I am trying to recall any of my commu-

mony of Roy E. Hallberg.)

tween the period January 27th, that is, the
f the criminal complaint being filed, and
ry 1st date of this hearing over in Municipi-
urt, as to any advice she obtained from your
y? [177] A. No.

Did you advise your attorney of the issu-
f that citation on January 13, 1954?

Yes, as far as I know I did.

Now, I have a few questions here that we
e able to clear up quite hurriedly, if you
have available to yourself your accounting.
ou have a copy of it, Mr. Hallberg?

I don't know what you are referring to, Mr.
t.

That is the accounting you filed in court
will try and locate the original.

ect your attention to page 3, line 17 through
, and to that portion of it appearing on line
ere you state:

ndered and performed by him or his agents
rying on the normal business and affairs of
rmer trust."

have that portion in mind? A. Yes.

Now, by these words, "him or his agents", do
ean that the things that were alleged to have
performed in this petition were done by the
or yourself? A. That is correct.

(Testimony of Roy E. Hallberg.)

self, as distinguished as being performed by an agent. A. That is correct.

Q. When you took office as Receiver, either before or after your qualifying as a Receiver on December 2, 1954, you retained in your office the five managers that had been running the apartment houses, didn't you? A. I did.

Q. You hired and retained Mr. Roy Harrison?

A. I did.

Q. Who had been acting as Mr. Richman's secretary?

A. I understood he was Mr. Richman's bookkeeper. That is all right.

Q. He took dictation quite quickly, didn't he, in your experience as a Receiver?

A. I didn't dictate to him. I wrote them up and told him what I wanted done.

Q. You would write your instructions on that it? A. Yes.

Q. In addition to Mr. Harrison, there were changes in the personnel, other than your employing Mrs. Hallberg or her rendering services with you, is that right?

A. In the office, yes, or under my control. There were other changes out in the field. [179]

Q. I am speaking now only of personnel, employees, full time employees, if I may put it that way, as distinguished from independent contractors.

mony of Roy E. Hallberg.)

But not in the managers, the five managers
ed? A. That is correct.

You didn't change those? A. No.

You took Mr. Richman's bookkeeper?

Correct.

And Mrs. Hallberg commenced assisting you,
right? A. That is correct.

Are there any other persons included in your
here, "him or his agents", than the five
ers, Mrs. Hallberg and Mr. Harrison, that
ned these things that you say you per-
? A. No other than Mr. Whyte.

Oh, yes. I take it he only went with you
to the apartments. He spent some time
hat, didn't he, about six hours, the first day,
right?

Well, I don't know now. He went with me,
80] that is true.

Did you ask him what his rate of compensa-
ould be? A. No.

As a matter of fact, Mr. Whyte is your at-
in other litigation, isn't he?

Correct.

That is, the Morgan Construction Tooth
ny litigation filed back in 1952?

He is assisting me on that, yes.

And he was not associated with O'Melveny
rs until shortly before you were appointed

(Testimony of Roy E. Hallberg.)

(The question was read.)

Mr. Whyte: Do you understand the question?

The Witness: No, I do not.

The Court: I don't, either. I wonder, in the question whether he was not associated until 1952, before the receiver started, or is it something else?

Q. (By Mr. Enright): You are familiar with the fact, are you not, that on November 30, 1952, at the time the court rendered its decision the representation was made that Mr. Whyte had not been associated until then, very recently, been associated with O'Melveny & Myers? [181]

A. That is correct.

Q. You, after that meeting, advised the court that he was then leaving or had just left O'Melveny & Myers?

A. He had left a short while before.

Q. As a matter of fact, he had left, to your own knowledge, as early as January of 1952?

A. I don't know.

The Court: What difference does it make whether all have known Mr. Whyte around these courts for some time as being up here on behalf of O'Melveny & Myers?

What difference does it make whether he was there or with Gibson, Dunn & Crutcher or whether he was associated with you?

Of course, we wouldn't want an attorney associated with one of the parties litigants here or

mony of Roy E. Hallberg.)

Enright: Well, it is a part of the representations that were made at that time, your Honor. As he then stated, it is my understanding, that he was then associated with that firm. I would not want to investigate into the matter. That is the

Court: I understood he had been but recently with that firm. What you mean by "recent" is with different people and in different situations. [182]

Enright: I don't think it would make much difference to me if he had been with them two years ago or if he had been two months ago. He was at one time with that distinguished law firm.

Whyte: For the record, your Honor, I left the firm of Whyte & Myers as of January 1, 1953, having been with them for almost exactly 10 years.

Enright: Now, for the record, I will quote page 12 of November 30th transcript, line 6:

Court: What I understand he has in mind is the selection of an attorney who is about to leave

Hallberg: He has just left.

Court: —for the purpose of forming his own legal practice. What is his name, Mr. Hall-

Hallberg: John Whyte. That is W-h-y-t-e."

(Testimony of Roy E. Hallberg.)

Q. Have you any arrangements or agree with him as to his services in representing you in the Morgan Tooth Company litigation? [183]

Mr. Whyte: Objected to as completely immaterial, your Honor.

The Court: Sustained.

Mr. Enright: I understand there is a person here seeking compensation on the part of Mr. Whyte. It is relevant to that.

The Court: Why? I am not going to allow Mr. Whyte anything except for services rendered in this case.

Mr. Enright: Is the court going to consider the rates of compensation in any manner in fixing the fee?

The Court: I am going to consider what, in my conscience, these parties should have, considering the services they rendered, the importance of the assignment, whether they carried it out or whether they did not carry it out, the amount of harassment and vexation attending the duties of the position and so on.

Mr. Enright: I understand the law to be that an element in fixing attorney's fees is the rates of compensation in the community.

The Court: I don't know what that Morgan case involves, and I am not going to take what was charged for services in that case as a guide.

mony of Roy E. Hallberg.)

ve in capacities of this kind, I am more inclined in that than I [184] am in what he received from Mr. Hallberg in some other case.

(By Mr. Enright): Now, directing your attention to your petition, page 12 thereof, and to page 33, my question is: You did not collect the rents for the days February 26, 27, 28, 1954? A. I did not.

Is that correct? A. I did not.

And at the time you verified this petition, you made your estimate and belief that the amount was approximately \$2,000.00 that you had not collected?

That is an approximate amount. It may have been \$1,000.00, it may have been \$1,500.00, it may have been \$2,000.00.

There was no way I could tell when that rent was due—or, would come in.

As of February 26, 1954, or the morning of February 27, 1954, you had been informed of the terms and conditions of the order of this court, had you not?

Witness: Have you got that in here, John?

Whyte: Yes. I don't find the order of this date of February 26, 1954, in this file. If I may look in my own file, I think I can locate it.

Court: Counsel, we haven't finished that

(Testimony of Roy E. Hallberg.)

row, and I will probably be through by 10:15 o'clock.

I think it would be safer if we figured on getting here at 11:00. We will begin this case tomorrow at 11:00 o'clock. Please let's not try to make a case out of it. It is the sort of thing that should have been over by now. It is the sort of thing that is customarily handled on a Monday motion calendar.

I know there are several issues here. I have not heard anything about the search you will want to make yet, and that seems to me to be the most important thing.

Mr. Enright: Could I ask a question then?

Q. (By Mr. Enright): How much compensation do you personally feel you should receive for Hallberg?

A. Well, in my petition I am leaving that matter entirely up to the court.

Mr. Enright: This, we understand, your Honor says. They won't state, in accordance with the court's ruling. They have asked us to defend against what might be reasonable.

We have to get all the facts out. If they don't tell us what his time is worth, there is nothing we can do but develop all the facts.

The Court: We will stand in recess until 12 o'clock [186] tomorrow morning.

(Whereupon, at 12:00 o'clock noon, The Court adjourns.)

ROY E. HALLBERG

as a witness on his own behalf, having been
sly duly sworn, resumed the stand, and tes-
urther as follows:

Cross Examination—(Continued)

(By Mr. Enright): Mr. Hallberg, I have
to be placed before you the original order
court bearing date February 26, 1954. Do
e that document?

I didn't hear your question.

You have the document before you?

Yes, I have the document; I have the docu-
zes.

Bearing in mind that is February 26, 1954,
ou advised by your attorney on February 25,
hat the plaintiffs and the defendants in the
ction had arrived at a settlement?

I had a conversation on that particular date
ng a conference that you were going to have
lowing day in court.

That is right. Concerning the subject matter
lement between the plaintiffs and the de-
ts?

I don't know what the subject matter was.
just a conference you were leaving here.

On the following day or on February 26th,
ou informed by Mr. Whyte, your attorney,

(Testimony of Roy E. Hallberg.)

Q. Yes. And at that time were you advising your attorney that the court had made the order of February 26, 1954, relieving you of your duties of management?

A. That is correct.

Q. Of the five apartments, or the trustee at that time?

A. Yes.

Q. Did your attorney also inform you that you were to only retain the money in the bank and not under your control?

A. I believe he did.

Q. Did he also inform you that the order was to be effective at 5:00 p.m. on Sunday, February 22, 1954?

A. I don't recall that.

Q. Well, do you recollect that you were to retain control of the whole property and all the money until Sunday evening, or 5:00 o'clock, Sunday, February 28th?

A. I don't recall that. The only thing I remember was that the receivership was being terminated and that came to me Friday night.

Q. Did you read that order there that is before you? I mean a copy of it, of course, the February 26, 1954 order?

A. I read it later, yes. [190]

Q. Did your attorney read it to you on February 26th, when you had a conversation with him in the evening?

A. I don't recall his having read it ver-

mony of Roy E. Hallberg.)

He gave me the sum and substance of it.

Now, directing your attention to your first
al report and petition for allowance of fees,
desire the original, or is there a copy avail-

I have a copy in here (Indicating).

You have already testified concerning the
00 figure shown on page 12 of the petition,
the receipts for the days of February 26,
28, 1954?

That was an approximate—it was an esti-
mate isn't factual.

Well, it is your best judgment when you veri-
fied the petition? A. That is correct.

And based upon your acting as receiver in
the matter, have you made an audit since then to
ascertain the amount or done anything?

No.

Now, directing your attention to Schedule B,
on that page thereof, you will note that there is
in the column, "Imprest Petty Cash" \$785.00,
is that correct? [191] A. That is correct.

Now, as of February 26, 27, and as of 5:00
p.m., February 28, 1954, there was \$785.00
in petty cash, wasn't there, in the hands of your
self or yourself as Receiver?

Not necessarily—

(Testimony of Roy E. Hallberg.)

on hand at each building for them to pay out-of-pocket expenses.

Q. When you use the pronoun "them" mean your managers or the managers in each building?

A. I am referring to the buildings that amounts are credited to.

Q. But it would be the manager of each of the buildings? A. That is correct.

Q. And they were your agents, were they?

A. That is correct.

Q. That \$785.00 was under your control?

A. That is correct.

Q. You did not take possession of that \$785.00, you left it with the managers, is that correct?

A. That is correct. For one reason. That reason [192] being that that was a part of their work on the properties of the building.

Q. So far as you know, Mr. Hallberg, the plaintiff, Lyda Tidwell or her agent, Mr. Udall, or one of her agents, still have that \$785.00, is that right?

A. So far as I know, yes. They have what represents \$785.00; either cash or receipts.

The Court: How did they get it?

The Witness: That was left in the building. The money was left in the building. There was an audit made of it. In the operation of the building

mony of Roy E. Hallberg.)

at money for cashing checks, and things like

(By Mr. Enright): As a matter of fact, you Mr. Hallberg, during the weekend of Friday, February 26th, through Sunday, February 28th, wrote out checks on the receivership account, to make up the amount of money that these managers would equal \$785.00? A. That is correct.

You actually issued checks upon the receivership account?

That is correct. However, they may have still not been out that before the end of the month.

Of course. I am only making a point that the \$785.00 [193] is \$785.00 under your control that can be accounted for.

Enright: Insofar as the rights of Lyda Tidwell and Frederick Richman are concerned, it is a matter against her that I feel this evidence clearly

Court: She got that amount of money or approximately that amount of money, which had been in the hands of the defendant, as I understand this witness, that he left the apartment houses when he surrendered them, and he considered it part of operating cash in the hands of the receiver.

Enright: I appreciate that is what he concluded it.

(Testimony of Roy E. Hallberg.)

the stipulation upon which it was based, that he to retain control of monies in bank and all monies under his control; and this is \$785.00 he did retain.

Mr. Powsner: At this point I think that I shall object for the record to this line of testimony so much for the purpose of excluding it from the record, but simply to register plaintiffs' point of view, that the several items, many of the items claimed as surchargeable amounts against the receiver, are actually in dispute between the plaintiffs and defendants.

As Mr. Enright said he thinks this evidence establishes a charge against the plaintiff, not Hallberg, I think it [194] should be kept in the record. These are items in dispute, which are to be determined in a subsequent proceeding, I believe a trial set for June 18th, and I don't think they are to be determined or to be assessed against Hallberg in this proceeding, any of these items.

There are several items, whether or not they were paid out in violation of the order, the point is whether there is a benefit, if there is a benefit, has it accrued to the plaintiff or to the defendant. And it is a matter of dispute between them, as to the amount of the funds to be divided between them, and as to who is to be surcharged for these various items. I don't think it is material to surcharging Mr. J.

mony of Roy E. Hallberg.)

(By Mr. Enright): Now, directing your attention, Mr. Hallberg, to Exhibit IV-2 of your rule B, I call to your attention under the column "Other" the amounts of money as being "Mortgage Payment-Interest" \$627.72 and principal, \$399.53.

These two amounts total \$2,027.25 and represent the payment to the holder of the note secured by the deed upon the Oliver Cromwell Apartments, is that correct? A. That is correct.

Now, the payment was due and payable on January 1, 1954, is that correct? [195]

That is correct.

Now, you paid that by check dated February 1, 1954, did you not?

That is correct.

It was received by the payee in March?

That is correct; should have been received

It was mailed that day.

We could quickly ascertain it.

The stamp on there doesn't necessarily mean it was received that day. It may have been held a couple of days before it was deposited in the bank.

Yes. But the previous payments you had made on this encumbrance you didn't pay—in the month of January you paid on a check issued January 1, 1954.

(Testimony of Roy E. Hallberg.)

Q. Would you like to see your statements or bank balances?

A. I know what they are.

Q. I will show them to you and see how like they were.

The Court: I am getting lost, Mr. Enright. what are you trying to prove now? I am off path.

Mr. Enright: Well, perhaps it is collateral. [196] witness is volunteering his reason for having paid the money.

The basic point involved is this: That there were Two Thousand Twenty-Seven Dollars and I think it is Twenty-Five Cents, whatever that exact amount is, that was paid out by the Receiver after the court order of February 26th, and that, too, is the sum of money which is paid to the holder of the encumbrance upon the Oliver Cromwell, being the payment due in March, and Lyda Tidwell has received the full benefit of that Two Thousand dollars out of this fund.

It, therefore, will be our position that, one, the Receiver violated the court order of February 26th, and, two, when and if issue is joined involving the dispute between Lyda Tidwell and Frederick Tidwell, under their contract of settlement dated February 1954, that they will have to settle their difference out of the balance of the money on hand.

mony of Roy E. Hallberg.)

Enright: Yes, your Honor, that is the defect of it.

Court: And then there is a question then whether Mr. Hallberg violated the court order requiring it.

Enright: Yes, your Honor. May I call it to the negligence on the part of Mr. Hallberg or advisers in not properly advising him concerning paying of that [197] money. That will be sufficient.

Whyte: If I may say something for just a moment.

Court: I had gotten out of orientation to the testimony, and I asked counsel to direct my attention to the particular issue which he has done. Do you want to direct it further?

Whyte: I wanted to correct a misstatement by Mr. Enright, that this money was paid out when the court order became effective.

Hallberg was relieved of his duties of active management as Receiver at 5:00 o'clock p.m. on that evening, February 28th.

The check, which has just been presented to him, was issued before that date, which conclusively answers any allegation that he paid it out in violation of the court order.

(Testimony of Roy E. Hallberg.)

Mr. Whyte: That was due on the 1st of M
The facts are undisputed on that.

The Witness: I wonder if, your Honor, I
make a statement here?

The Court: No.

Q. (By Mr. Enright): Now, as to your d
as pointed out by Mr. White, to have monies o
encumbrance there on [198] their due date, I
your attention to this check No. 204 dated D
ber 31, 1953, and ask you to examine the ti
cleared, as to—and then tell us when you m
that check in?

A. Again I can't tell you exactly when thi
mailed. I have no way of telling. The check
made out on that date and I have no way of t
how long the recipient of the check held it b
depositing it.

Q. You do know, don't you, Mr. Hallberg
check was dated back to December 31st and
paid about the middle of January?

A. There is no way I can tell at this time.

Mr. Enright: I will develop it by another
ness.

Q. (By Mr. Enright): Now, directing you
tention, Mr. Hallberg, to your Schedule D,
an itemization of the creditors, you have the
of "Frederick I. Richman, Management Fe
November 1953 in amount claimed" in the ar

mony of Roy E. Hallberg.)

after you became Receiver, weren't you?

There never has been any bill sent to me, communication as to the amount Mr. Richman paid for services rendered. Had I received that I would have turned it over to the court for them, as to payment to be made. [199]

My question was, were you informed?

No.

You did not have a conversation with Mr. Richman at the time you took over the records?

He told me what he had been getting, but never asked me for any of this money. That I picked up here as more or less a contingent lia-

Now, directing your attention to the top of Exhibit C, where you state, "Disbursements Made by Receiver as Directed by the Court", as I understand this, Mr. Hallberg, you and Mr. Whyte went to a game of golf on a Sunday, March 7, 1954, and in the evening you called Judge Tolin, is that correct?

A. That is correct.

Now, did you inform Judge Tolin of the nature of these operating expenses or bills that you itemized here, that you have disbursed?

I believe I did.

Now, Mr. Whyte was there during the phone conversation?

A. He was.

(Testimony of Roy E. Hallberg.)

A. I don't actually recall. However, I do that [200] I paid—we accumulated all these and I wanted to find out whether they should be paid.

Q. I appreciate your wanting to pay them. I am only concerned with this question: Did you or did you not at that time inform Judge Tolin that there was a dispute between Martin, Harold Camusi, representing the plaintiff, and Joseph Whyte, representing the defendant, concerning the payment of these bills?

A. I don't recall the conversation, but this must have been—there must have been some question in my mind in calling for instructions.

Q. Did Mr. Whyte also talk to Judge Tolin at that time? A. He did.

Q. You were present during the conversation in so far as you could hear what Mr. Whyte was to say?

A. I heard one-half of the conversation.

Q. Did you hear him advise Judge Tolin that there was a dispute between the attorneys representing the respective parties concerning the payment of these bills?

A. I can't recall the conversation now.

Q. So far as you know, no attempt was made by yourself, as Receiver, or by your agent, or by any attorney, to communicate with myself, Mr. Ennis,

mony of Roy E. Hallberg.)

Whyte: Will you read it?

Enright: Read the question.

(The question was read.)

(By Mr. Enright): Is that clear, Mr. Hall-

Whyte: As to what this man knows thatorney did, he hasn't any way of knowingr I communicated with you or not.

going to object to the question in so far as itm for what action I took. I am the best witness to that. That was done out of his presence.

Enright: I am not asking for what you did. asking for his knowledge as Receiver at this

Witness: I can't recall.

(By Mr. Enright): You did pay out \$6,121.40 result of this—after that telephone call, as on the schedules?

That is correct.

Now, did Mr. Udall direct the managers ofartment houses, which managers had beenly employed by you, until 5:00 o'clock Feb-28, 1954, not to pay the weekend collectionsimating \$2,000.00 to you?

He didn't tell me that, to me.

No. Relate what you know on that subject, so we can expedite this, if we can.

(Testimony of Roy E. Hallberg.)

Q. And to pay the money to him?

A. And the inference was to pay it to him. I did not collect over the weekend and there was a good reason for it. In the first place, picked up the ready cash——

Mr. Whyte: Mr. Hallberg, you have answered the question.

The Witness: Thank you.

Q. (By Mr. Enright): You were informed of this by Mrs. Hallberg, is that correct?

A. That is correct.

Q. When were you informed of that instruction given by Mr. Udall? A. Monday.

Q. Now to revert back to this phone conversation on March 7, 1954. I assume you felt you knew Judge Tolin sufficiently well over the years or a period of time you could call him on the phone for instructions, is that it?

A. Well, I felt that inasmuch as I was working in conjunction with the court I had a right to pick up for further instructions.

Q. You had known Judge Tolin since the time you had moved on Glen Summer Road?

A. Known him casually, yes.

Q. He lived in the same block as you did on Glen [203] Summer Road? A. That is right.

mony of Roy E. Hallberg.)

I am quite sure that is the exact amount.

you received any refund on that deposit?

I imagine the records will show whether a
came in.

It isn't shown in your accounting, I am sure,
Hallberg.

Have you done anything since filing the account-
concerning that refund?

I think you will find it in there.

Will you point it out then, if you think I will
there.

I haven't the books here.

The books of the receivership are here. Are
familiar with them? A. Yes.

Point out——

Whyte: Why don't you show him the items?

Enright: I am not that much of a book-

Court: Mr. Enright says it isn't there, as I
stand. I understand you to say you can't find it.

Enright: Not in the accounting I can't find
I can trace some refund——

Court: Let's have him do it during the re-
and conserve the court time.

Enright: Yes, I think that is more expe-

(By Mr. Enright): Now, again directing

(Testimony of Roy E. Hallberg.)

A. I believe I have them here, yes.

Q. Will you tell us what the amounts are?

A. The one I have here——

Q. What column? A. Sir?

Mr. Enright: Will you read the question, Reporter?

(The record was read.)

Q. (By Mr. Enright): If you do not understand the accounting, I would appreciate your saying so, the mechanics of it; I would appreciate your stating so.

And I would further appreciate it if you would not aid the witness in ascertaining amounts.

A. If you will look on the large page under column "Office" you see an amount of \$450.00 first item.

Q. Yes. Any other item?

A. It will be included in your disbursement [205] February, under operating \$600.00, in the

Q. How about December?

A. You will find it under "Office"——

Q. What page?

A. Two pages prior to the large one. You find an item there of \$500.84, I believe you find covers——

Mr. Whyte: May the record show that the witness is now referring to the third page of Schedule E

mony of Roy E. Hallberg.)

Now, Mr. Hallberg, when you were appointed
r and within the two or three days after
appointment, and I assume December 2nd as
ate of appointment,—we had better go back
ember 1st—that was the day, I think you
ound to some of the apartment houses.

g the first three days, did you introduce
to the managers as being your agent?

Yes.

What did you tell the managers?

I introduced Miss Cosgrove.

What did you tell the managers?

I told them she was going to act for me.

In the——

In the management, yes. And anything she
[206] would be under my instructions, and
re to follow it.

You did not later inform the managers that
Cosgrove was your wife, did you?

I didn't see it was necessary, for the simple
that she preferred acting as Miss Cosgrove.

You did not inform Judge Tolin you in-
to delegate your operation of these five
ent houses to your wife, did you?

I did not inform him that I was going to
y assistance, or, in fact, we had no conver-
about the assistance I was going to require.

(Testimony of Roy E. Hallberg.)

the Receiver by receiving reports from Miss Cosgrove?

Mr. Whyte: Oh, objected to as going far beyond the evidence adduced here. The witness has testified as to what he did.

His own personal activities, as to a Receiver, went far beyond receiving reports from Miss Cosgrove or Mrs. Hallberg. It assumes facts completely contrary to the facts.

The Court: Overruled.

Q. (By Mr. Enright): You did, in fact, rely upon Hallberg, especially—or, commencing December 1953, rely upon Miss [207] Cosgrove in performing activities involved in the management of five apartment houses?

A. I didn't hear everything you said the last time.

Mr. Enright: Read the question.

(The question was read.)

The Witness: I relied on some of her activities that is true.

Q. (By Mr. Enright): Actually, the proper method of operation was that commencing January 7th and all through February 28th, and you would make trips up to Los Angeles on the weekends or come up Friday night after completing work for the County of Orange, isn't that correct?

A. I came up during the week. I came up during the week.

mony of Roy E. Hallberg.)

During the week I was there on various oc-

During the week you would receive reports you got home from Miss Cosgrove, as to the chances during the day?

Sometimes I did.

Now, Exhibit B, that is your little diary, is right? It records the principal problems you each day as they arose during your activities as far as in this matter?

I think I explained that book to you at the [208] I presented it to you, that it is a composite of the various activities up to a certain point. It does not include everything, every little conversation, every person we talked to, but as an overview of various things we considered important enough to write down.

The important and principal problems you have recorded here, are they not?

For the most part.

Which ones are not then?

I can't tell you now.

Did you consider the refrigeration problem Western Arms an important problem?

I did, and I was there.

When were you there?

I was there.

(Testimony of Roy E. Hallberg.)

Q. And was that the day of the breakdown?

A. No, it was two days following, and it was running perfectly.

Q. In fact, it was two days later, after the breakdown, that you got there, wasn't it?

A. After all, it was a question of having the machine in operation—— [209]

The Court: Mr. Hallberg, the question should be answered yes or no. Then if it is necessary to explain it, you may do so.

The Witness: Will you state the question again?

Mr. Enright: Read it, please, Miss Reporter.

(The question was read.)

The Witness: Yes.

Mr. Whyte: You wish to explain your answer to Mr. Hallberg?

The Witness: I do. We had the original tractor, the original refrigeration contractor at the office. I talked with him and I was a little concerned about his knowledge of refrigeration. It happened to be the California Refrigeration Company.

I also talked with the Normandie Refrigeration Company, who had apparently much more experience. And the words were given to Mr.—given to the Normandie Refrigeration to finish up the job and save some upon it.

Q. Are you through with your explanation?

mony of Roy E. Hallberg.)

lapsed, from the time the emergency arose
e time you arrived there?

Witness: It is pretty hard at this time to
I do know I went in there and as far as the
work on the unit was concerned, the men
more capable than I was [210] of doing the
ed amount of repair; my being there wouldn't
elped any.

Court: How long after the emergency first
efore you talked to any refrigeration men
t?

Witness: I talked to them on the telephone
xt day.

Court: Did the emergency arise in the
me?

Witness: It did.

Court: What time of day did you hear
t?

Witness: I heard about it late that after-
The managers had certain contractors they
t liberty to call for emergency work. And
rigration they were to call the California
eration Company.

n they got on the job they worked during
y and had repeated phone calls with their
which was overheard by the manager and
to the manager the men didn't know what

(Testimony of Roy E. Hallberg.)

answer, that the men didn't know what they were doing?

The Court: No. He said it proved to the mind of the manager that the men didn't.

Mr. Enright: The manager, I see.

The Court: He is talking about the state of mind of the [211] manager as she communicated it to him, as I understand it.

Is that right?

The Witness: Yes.

The Court: Then you first came into the station after the resident manager gave up, is that right?

The Witness: That is right.

The Court: How long after you got that information from the resident manager before you did anything?

The Witness: She had contacted another refrigeration company, knowing it was quite vital to get immediate service on the refrigeration. And I think actually her calling as soon as she did that another refrigeration company was quite in line with her duties, because of the fact that she had a company already on file that she could call in an emergency. And the man who she did call at that time worked for the same company.

The Court: Well, the question, though, was how long after you were told that she was dissatisfied

mony of Roy E. Hallberg.)

Court: Before noon?

Witness: Yes.

Court: Before 10:00 o'clock?

Witness: At this moment I would say before noon. [212]

Court: 12:00 o'clock. Mr. Enright, I don't want to shortchange you, but we had better take a recess. We can convene at 1:30, if you like.

Enright: Whatever is the convenience of the court.

Court: 1:30.

(Whereupon, recess was taken at 12:00 o'clock p.m., Friday, May 14, 1954, to 1:30 o'clock p.m. of the same day.) [213]

ROY E. HALLBERG

as a witness on his own behalf, having been previously duly sworn, resumed the stand, and testified further as follows:

Cross Examination—(Continued)

(By Mr. Enright): Mr. Hallberg, before the recess we were discussing the subject matter of the refrigeration failure at the Western Arms.

Enright: May I inquire if the court has permitted his questions?

(Testimony of Roy E. Hallberg.)

or made up in the evenings at your home, is right? A. May I have my—

Mr. Whyte: May the witness refresh his recollection?

Mr. Enright: If I may step up next to the witness, I will use my copy.

The Court: Surely.

Q. (By Mr. Enright): Now, directing your attention to your notations made for Friday, February 19, 1954, you made the entry, "to W. A. Refrigeration. John Dougherty", is [214] that correct? You made that entry on that date?

A. I made that entry, yes.

Q. Now, the only other entry you made in your diary concerning this refrigeration problem was one made on February 22nd, where you entered "Switched to Normandie Refrigeration at W. A." meaning Western Arms?

A. That is correct, yes.

Q. Those are the only two entries you made?

A. That is correct.

Q. In your diary?

A. That is correct.

Mr. Whyte: Did you check that, Mr. Hallberg?

The Witness: Yes.

Mr. Whyte: All those intervening days?

Mr. Enright: I will represent to the court that I have checked them and I found no other entries.

mony of Roy E. Hallberg.)

Witness: As far as I recall, those are the entries.

(By Mr. Enright): February 22nd was a day, was it not, so far as the County of Orange is concerned? A. Yes.

Now, where were you during the period from Monday 16th to Friday, the 19th, if you know? It is pretty hard to tell you now.

Were you available at your home phone number, Corona del Mar? A. Oh, yes.

You were available there?

Not during the day, probably, but at night definitely.

Did your agent, Mrs. Hallberg, report to you on the 16th, 17th or 18th that the refrigeration had a failure in the Western Arms Apart-

At this time, no, because the refrigeration company would have automatically been

Then the refrigeration of these 406 apartment houses is a matter of auto-attention on the part of the managers, is it so far as you as Receiver were concerned? I don't believe you mean exactly as you mean it there.

You did not attend to this refrigeration

(Testimony of Roy E. Hallberg.)

no knowledge of any problem on the refrigerator during that period of time, February 16th through 19th, in the evening, [216] Friday evening, February 19th? A. I was available.

Q. My question was, was your knowledge of the problem as Receiver. You didn't even know there was a problem, did you, during that period?

A. I do not believe it had been reported. However, I cannot recall exactly because there is no mention in my diary here.

Q. And now, you stated before recess that you did come to Los Angeles during the period December 7th to February 28th on workdays, Monday through Friday?

A. I was through at times.

Q. The only times you did come to Los Angeles during the work hours of the day, 8:00 in the morning to 5:00 in the evening, was on the occasion that your petition for authority to renovate the apartments was heard in this court in an afternoon in December, isn't that correct?

A. That is not correct.

Q. The only other time you came to Los Angeles was the time you appeared over at the City Engineer's Office of the City of Los Angeles at 4:00 o'clock in the afternoon on the smog complaint? A. No.

Q. What other times did you come to Los Angeles?

mony of Roy E. Hallberg.)

I stated previously that there were times I
n during the week.

On Friday afternoon late?

During the week; not on Friday.

Show me in your notes here any entry that
ve made as to a trip you made to town here
the day——

I have no entries there at all showing I made
ps or that I didn't make any trips.

In all the entries in these notes here usually
rds "made the rounds" merely means that
Hallberg went to the apartments and picked
monies, isn't that right?

Not necessarily.

Court: Would it ever mean that?

Witness: Occasionally it would.

Court: What else would it mean?

Witness: It would mean that I probably
n and made a fast turn of the apartments.

(By Mr. Enright): Did you see the man-
when you did that?

Occasionally I did; quite often I didn't.

Wouldn't you want to know from your man-
what the problems were and how they were
along with these 60 and 80 and 50-unit
ents? [218]

If there were any problems I am quite sure

(Testimony of Roy E. Hallberg.)

five apartment houses during the work week
that correct? A. No.

Q. I direct your attention to your deposition, page 89, line 25, to page 90, line 19. When you completed reading it, please advise me.

A. I think the——

Mr. Whyte: There is no question before the court, house, Mr. Hallberg.

Q. (By Mr. Enright): Did you on April 1, 1954, testify as follows concerning this subject matter:

“Q. Well, generally, didn’t you do your work on the operation of these apartments on weekdays, weekends, Mr. Hallberg?”

“A. I did this, done that.”

A. That isn’t what I said.

Q. (Continuing reading:)

“Q. I mean, that was the rule, wasn’t it?”

“A. Not necessarily.

“Q. You’d come in on weekends, Saturday and Sundays?”

“A. Not necessarily. I came in during the week some evenings.”

Mr. Whyte: Mr. Enright, may I interrupt you now, whether you are reading from the original deposition or the corrected deposition?

Mr. Enright: I am reading from the deposition as handed to me by the reporter.

mony of Roy E. Hallberg.)

Enright: I will read the portion as given in deposition and then read it as he corrected it. The record will be complete.

You'd come in on weekends, Saturdays and Sundays?

Not necessarily. I came in during the week on some evenings.

Some evenings during the week?

Yes.

But not during the daytime very frequently?

I have—was in during the day at times.

Approximately how many times during the week?

“A. I don't recall now.

Now, you were busy during the day working in the County of Orange, weren't you; that is, on week days, Monday through Saturday, or on Friday night?

Friday nights I made it a point to get in the County and stayed around all day Saturday, and was there on occasion on Sunday.”

Whyte: May the record show what Mr. Enright has read is the deposition copy received by the reporter and not corrected by the witness on the original?

Enright: I will complete it, sir.

(By Mr. Enright): Now, Mr. Hallberg, do

(Testimony of Roy E. Hallberg.)

Q. All right. Then you did correct page 90, 5 to 7, to read as follows:

“Q. You’d come in on weekends, Saturdays Sundays?

“A. Not necessarily. I came in during the some evenings,”

and you wish to add on to that “as well as da is that correct? A. That is correct.

Q. Now, what other days, other than the that you appeared over at the City Prosecu office on the smog control complaint and the you appeared before his Honor of this cour your petition for authority to renovate those a ments, what other days did you come in? [221]

A. I believe I stated at the time that I cou tell you the exact days, but there were many that I came in.

Q. Now, you referred in your direct testin to negotiating some insurance. Didn’t Mrs. berg attend to most of those negotiations?

A. I was in the office on two occasions. He me at my office on one occasion. Mrs. Hallberg contacted Mr. Dulley, the broker.

Q. You met Mr. Dulley twice, and he wa your office once? A. Yes.

Mr. Harrison worked from Monday through day as an employee of yours, didn’t he?

A. That is correct.

mony of Roy E. Hallberg.)

Is it your testimony you set up a new system of keeping the records of the administration of these properties? A. I did.

And you gave your directions to Mr. Harri-
writing, did you?

I gave some instructions to him, yes, not all.

Enright: May I have these four sheets of
marked for identification next in order?

Clerk: Defendants' C for identification.

(The documents referred to were marked De-
ndants' Exhibit C for identification.)

(By Mr. Enright): Mr. Hallberg, I present
Exhibit C for identification and then ask
to examine all three of these sheets of paper
to state whether or not they are in your hand-
writing?

Whyte: Can you answer that question, Mr.
Hallberg?

Witness: What was the question?

(The question was read.)

Witness: They are in my handwriting, with
exception——

(By Mr. Enright): Yes, go ahead and
state.

This, I don't know (indicating); that is
hand. I don't know what that is.

The shorthand writing appearing on one of

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Now, the sheet identification constitutes your instructions to Harrison to prepare the new set of books?

A. No, those were not instructions to prepare a set [223] of books. Those were instructions what I wanted to get and we were going to go down and work it out, because a bookkeeper has been accustomed to one method sometimes it is a little difficult to jump to a completely different set of books.

Q. Do you base your answer on how bookkeepers operate on your training at Northwestern, back in the '20's, and your approximate one year work with the books pertaining to a bondholder's title in possession of property in Chicago in 1931?

A. As a matter of fact, information you gave on methods is not lost.

Q. You didn't lose your knowledge about it back in the '20's at Northwestern?

A. No, sir. I still think——

Q. I appreciate you do.

The Court: Have you ever done anything in bookkeeping since then?

The Witness: I have done it quite often myself or Morgan Construction Tooth Company and even I was an auditor appraising——when I was an auditor appraising, I worked with the books.

Q. (By Mr. Enright): Morgan Construction

mony of Roy E. Hallberg.)

At that time you went into and examined Morgan [224] Construction Tooth Company's books, did you not, in May and June of 1951?

No.

You did not?

No, because there were no books.

There were no books? A. No.

Do I understand you correctly to state that in Construction Tooth Company, a corporation, there were no books during the months of May and June of 1951?

You recall I testified that a public accountant was brought in there to bring those records up to date?

Well, what records was he bringing up to date? Were there books he was bringing up to date? The books and the records, yes.

And you with the public accountant brought the records up to date, did you?

I wasn't concerned with the past.

You were not?

Not at that point. I was keeping the records up to date and making the entries, the current entries.

After you went with Morgan Construction Company in June, is that right, May or June,—

June, yes.

(Testimony of Roy E. Hallberg.)

Q. You did that each month during through December of 1951? A. Yes.

Q. So you did have six months there of ing of books involving the sale of a tooth to up on the end of a boom shovel or earth m equipment, is that it?

A. It was not quite technically correct, bu

Q. Very close, though, isn't it? Isn't that

A. It is close enough.

Q. So these are the type of instruction gave or prepared over the weekends when you in Los Angeles and left for Mr. Harrison you

A. It doesn't necessarily mean it was pre over the weekend; they are not dated.

Q. I know that. But they are the type structions you left for Mr. Harrison?

A. That was for, information, as I exp before, so that we could get books together an he would be able to work with.

Q. You did not prepare a report as to ceiver within the 30 days after your appoint as provided by the [226] rules of this cour

Mr. Whyte: Objected to as calling for a conclusion from a lay witness.

Q. (By Mr. Enright): Did you prepare port within the 30 days commencing Decem 1953?

Mr. Whyte: Objected to as immaterial.

mony of Roy E. Hallberg.)

Court: Sustained.

Enright: I wish to prove through this witness and make offer of proof that he failed to fulfill his duties as Receiver in preparing a report as required by the rules of this court, which are that the Receiver submit his report within 30 days after appointment.

Court: All right. That is what you want to just ask him that.

Enright: I will take notice of what is in our records and see if it is or is not there.

Enright: All right.

(By Mr. Enright): Then I will ask you: Did you prepare a report within the 30 days after you were appointed Receiver?

Enright: We started to prepare a report and it wasn't ready. [227]

Enright: Now, I move to strike "it wasn't ready."

Court: That part of the answer will go out.

(By Mr. Enright): You started to prepare a report, didn't you, Mr. Hallberg, and you found the records were not complete, isn't that true?

Enright: No.

Enright: You had Mr. Whyte come out and instructed Garrison to get the report prepared, also?

Enright: We had to find out what information was

(Testimony of Roy E. Hallberg.)

Q. Yes. And approximately a week or so then an order was made by this court extending the time within which to make the report, that right? A. That is correct.

Q. Did you represent to Judge Tolin, before your appointment on December 2, 1953, that you had for some years been associated with professional management operation in Chicago? I call your attention to the word "years".

A. I believe I mentioned the fact that I had professional experience that extended over a period of time in Chicago.

Q. You did make the representation to Judge Tolin that you had for years had this experience, as I just stated [228] it, before you were appointed?

I would appreciate a yes or no answer, and you may explain it in any manner you want.

Mr. Whyte: I am going to request the transcript be shown to the witness. The transcript is the evidence of what he said to Judge Tolin. I request he be shown the transcript.

The Court: Mr. Whyte, he is inquiring about what he told me before there ever was a transcript. At least, I am assuming he is. If I hadn't had knowledge of your client he never would have been ten in here to make a transcript, so the objection is overruled.

mony of Roy E. Hallberg.)

When the approximate time, place, persons present with respect to this conversation.

He wants to lay a foundation, let him do it fully here, so that the witness is acquainted with the conversation he has in mind.

Court: Of course, we are not seeking to embarrass a man now. We are undertaking to fix a commission after he has completed his services. I don't think that is worth laboring too much, what the circumstances were in his getting the employment—
[229]

Whyte: Then I will add the objection of irrelevancy, your Honor.

Court: No, it is material and it is proper. It should be considered here.

Now we have taken a tremendous lot of time with it, we don't think it is worth a whole lot of time.

Witness: The question, you are asking me to state a fact that is awfully hard to recall. The fact is that I handled properties extending over one, possibly two different years, and the term "years" is a vague term——

(By Mr. Enright): Would you please answer the question, after you are through with your examination, whether it is yes or no, your answer?

Well, the question, you can't answer it yes

(Testimony of Roy E. Hallberg.)

Mr. Enright: My inquiry is what representations were made to this court before his appointment. The doctrine of unclean hands, that has application to every proceeding in equity. I would desire to put this foundation, that this man's hands are not clean.

I will proceed to another question.

Q. (By Mr. Enright): Did you represent Judge Tolin, before your appointment as a receiver, that you had been [230] engaged in managing property for elderly relatives in this area?

A. I don't know that I made any such statement.

Q. Would you say that you did not make a representation to Judge Tolin?

A. I wasn't managing properties for a relative here.

Q. I appreciate that, sir. But I want to know what you represented to this court, and I would like to have your answer.

A. I think the answer has already been given to you in the deposition.

Q. What did you tell Judge Tolin concerning managing property for elderly relatives?

A. I don't know that I told him anything about elderly relatives.

Mr. Enright: You see, your Honor, I am in a predicament: This is what I anticipated would happen when I filed a petition concerning your Honor's qualifications.

mony of Roy E. Hallberg.)

don't know if you know how Receivers are appointed in this court generally, Mr. Enright.

I had a case the other day and one of the other judges said, when he happened to be at a place where some of the judges were together, he said, "Many of you fellows know [231] anyone that would be good at running a certain kind of business?" And he named it.

He said, "I thought of asking so-and-so," and he named a well-known attorney. He said, "I knew he would do a business of that kind. I telephoned him but he isn't available."

Now we get suggestions from things that we have heard, as a matter of common community knowledge about people, and then we follow them up; we make further inquiry.

No further inquiry was made here on the record. My impression at the time that I asked Mr. Hallberg to come in was that he had been operating a apartment house in Pasadena or South Pasadena for an elderly relative.

It turns out, on the hearing now, he owned the apartment house and the elderly relative was probably working for him.

Enright: I appreciate that, but——

Court: I don't see it makes much difference. The thing is that he had had acquaintance to that

(Testimony of Roy E. Hallberg.)

record that this witness, this Receiver, did misrepresentations to the court, and the court upon them and made the appointment. That predicament I am in.

I will apparently have to call the court as a witness as [232] to what he did or didn't say to

The Court: You can't call the court on that subject. We are not going into it any further. closed.

Mr. Enright: I will desire to complete this here:

Q. (By Mr. Enright): Did you represent Judge Tolin that you had managed apartments for elderly relatives who have considerable apartment property in southern California?

Mr. Whyte: Objected to as immaterial; all asked and answered.

The Court: Sustained on the ground it has asked and answered.

Mr. Enright: I will point out the amount of properties involved in this last question, that was not involved in the previous question.

Q. (By Mr. Enright): Did you represent to the court before your appointment, that your vocation for some years, was the management of real property?

A. I believe I mentioned to the court that I handled and managed properties.

mony of Roy E. Hallberg.)

ed, and I take it that is a direction to me not
sue this subject matter.

Court: It is a direction to you to not go
r into what led me to call Mr. Hallberg in
nd present [233] himself for questioning at
ne that he was appointed.

se Receivers do not in this court,—they might
bankruptcy side, but in this court generally
receivers are not people that come around
g representations and asking for these ap-
ents. They are people whom the judges seek
nd it is looked upon with not a very kindly
hen we seek out people whom we consider
ed, to come in here and try the judge and
ceiver on the basis of bad faith in the repre-
ons.

Enright: I appreciate your Honor's state-
but I desire to develop that after this man
ught out by your Honor he then made the
entations which are not true and the repre-
ons resulted——

Court: You may question him all you want
the representations he made on the record
ve called him in here for further examination
nsel and inquiry by the court.

y, all you want to. I hope you will not take
ameen at it

(Testimony of Roy E. Hallberg.)

you are wasting time. You are one of the most intelligent men whom I know.

Mr. Enright: Thank you, your Honor. [2]

Q. (By Mr. Enright): Did you represent Judge Tolin and the parties assembled in the chambers of Judge Tolin on November 30, 1953, whose main vocation for some years was in the management of real property?

Mr. Whyte: Before you answer, Mr. Hallberg, the counsel is questioning you with reference to a written document, and I am going to request that the writing be placed before you.

The Court: If you are questioning him with respect to things set on the record, he should be shown the record.

Q. (By Mr. Enright): I direct your attention to the transcript of November 30, 1953, pages 5 and 6, reading as follows:

“* * * that your main vocation for some years was in the management of real properties, * *

A. That is correct. During the years that I managed those properties.

Q. And the years you are referring to is from the year 1931 in Chicago?

A. And '32. It will extend over into '32.

Q. Your acquiring a residence on Glen Street, South Road in 1947 and living there until 1952, that was your residence, two residences on that street?

mony of Roy E. Hallberg.)

And one apartment house here on Fair Oaks?

One on Fair Oaks, and——

The four-family flat on El Molino?

That is a four-apartment building on El Mo-
s.

And two residences down in Orange County?

One a residence and one a triplex.

And that was your main vocation for some
as of November 30, 1953, is that right?

It is so stated.

And did you represent at that time, as stated
s 7, 8 and a portion of 9, on page 10, as
:

* that your experience in it locally has been
management of your own real properties,
were of income nature, and of similar **proper-**
ned by either you or your wife's relatives''?

This part up here was what I was answering
(ting).

Your whole answer, statement to the court,
follows:—so we will make it clear, I will
l the representation, commencing at line 3—
w, they haven't announced any objection, but
n't know you. I have explained to them——"

Whyte: May the record show this is the
statements which are being read into the

(Testimony of Roy E. Hallberg.)

these are Mr. Hallberg's statements. These are the court's statements. Go ahead, Mr. Enright.

Mr. Enright: Thank you. Starting over, Reporter, at line 3:

"Now, they haven't announced any objections. They don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some time was in the management of real properties, sometimes in connection with court receiverships, that your experience in it locally has been in the management of your own real properties, that they were of income nature, and of similar properties owned by either you or your wife's relatives."

Q. (By Mr. Enright): Mr. Hallberg, is that correct?

A. Ostensibly this is correct, with the exception of that last statement there. That was just a general statement. But the main fact was I had managed properties.

The Court: What he wants to know, Mr. Hallberg, is did the reporter get down correctly what you went on?

The Witness: I don't believe the reporter got it. However, at that time there was quite a general discussion and several people there, and the exact wording of that particular statement escaped me.

Q. (By Mr. Enright): Now, before you

mony of Roy E. Hallberg.)

at you had represented to this court, and I

Whyte: Again may the record show this is
turt's statement that is being read into the

Enright (Reading):

. Hallberg was for some years associated with
erty management operation in Chicago, and
onsiderable acquaintance and experience in
ype of work. Since coming to California he
ld various positions with different types of
ations, and has been engaged in the manage-
of property for elderly relatives who have
erable apartment property in southern Cali-

alled him and found that he is available, and
d him to come in here at about 2:00 o'clock
so that counsel could meet him. It was my
on——"

t is concerning another subject matter.

(By Mr. Enright): That statement was like-
rue? A. Yes.

Enright: That is all. [238]

Redirect Examination

(By Mr. Whyte): By the way, Mr. Hallberg,
plied to the question that statement was also

(Testimony of Roy E. Hallberg.)

ask—I may find myself in a mental reservation something—if he is just saying the reported it correctly. I want to find out whether the statement is true, in addition to whether the reporter reported it correctly. I don't know what this means here myself, but I want to have no uncertainty in the record.

The statements were correct?

The Witness: Yes.

Mr. Enright: And they were the truth?

The Witness: As far as I can tell you now.

Q. (By Mr. Whyte): In the course of your duties as the Receiver of real and personal properties constituting the former Richman Trust, did you sign the checks which were issued by you as Receiver? A. I did.

Q. Will you tell us what you did in connection with the execution and issuance of each one of those checks? [239]

A. Those checks had been made out together with the supporting evidence in the way of bills and were checked against the amounts and I signed them.

Q. At the time you signed the check did you compare the amount on the check with the amount set forth in the bill? A. I did.

Q. Did you make any other check to determine or did you perform any other task in that connection, other than the check as made to reflect

mony of Roy E. Hallberg.)

It was checked before it was even presented, to see if the work had been finished.

By whom was the invoice checked?

By Mrs. Hallberg and myself.

You testified that you discussed matters during the evening with Mrs. Hallberg on frequent occasions. What sort of matters did you discuss with her at the end of the day?

Such problems as we both encountered during the day; work around the buildings. She encountered them and I encountered them. A lot of decisions were made at night, based on the information I had.

During those evening conferences, did you give her instructions with reference to the work of the succeeding day's work? [240]

I certainly did.

You have testified concerning your ownership of a 16-unit apartment building on South Fair Avenue in South Pasadena. Please tell the court what, if anything, you did with regard to the actual operation of that building.

Enright: Objected to as there was no cross-examination on what he actually did to establish the number of apartments; improper redirect examination.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Whyte): By "we" whom do you mean?

A. Mrs. Hallberg and I completely redid the building schemes throughout the building. The building was painted both inside and out. A lot of work was done by myself.

We had contractors called in to do some of the work. The roof was repaired. The garage doors were changed. The carpeting was completely pulled out and replaced by new carpeting to harmonize with the walls of the corridors, and new refrigeration equipment was put in. We took some double apartments and made singles out of them.

Q. Did you do any of the painting work yourself, Mr. Hallberg? A. I did, yes. [24]

Q. Did you do any of the carpeting work yourself? A. I did some of that, yes.

Q. What other manual labor in the building did you do yourself?

A. Oh, I laid some tile, that is, floor tile.

Mr. Whyte: I think that will be sufficient.

The Court: I hope that someone is going to establish here whether there was a decline in income or an increase in income for the same property during the period of the receivership and the immediately preceding period.

Mr. Enright: In that connection, your Honor, there are two aspects. We haven't seen the records of the building, but I am going to

mony of Roy E. Hallberg.)

s, at least in California, in Los Angeles. You compare those three months.

e wants to compare those three months that in possession with three months, comparable months of other years, that could be done. I it would carry some weight or have some that way.

Court: That might be the proper comparison to make. But it would be of interest. Suppose a sharp decline? Everything goes along on a certain occupancy level, and you put in a re- and it cuts down to half that, that would be a big cut. [242]

le I am not going to give him credit for seasonal increase, if it turns out there was a seasonal decrease, I would like to know how it turned out and how it went in.

Enright: Yes. If that evidence goes in I know what it will be. I will say I would want the opportunity to bring in the comparable months of previous years.

Court: It wouldn't be worth anything unless you had it.

Enright: My opinion, I am sure, is not controlling in this matter, but I think it should be to a comparable period.

(By Mr. Whyte): Calling your attention to

(Testimony of Roy E. Hallberg.)

A. Some forty or fifty buildings. I don't know the exact number now.

Q. What services did you perform with reference to those buildings?

Mr. Enright: I object. No cross examination on that subject.

The Court: Sustained.

Q. (By Mr. Whyte): What was the building in the group that you managed in Chicago?

Mr. Enright: Objection, on the same ground as your Honor. [243]

The Court: Sustained.

Q. (By Mr. Whyte): During the course of your cross examination your attention was directed to your report and petition for fees, and specifically to page 3, lines 17 to 22, in which you reported to this court:

"Petitioner's operations with reference to the assets and properties of the former Richman Trust and the services which have been necessarily considered and performed by him or his agents in carrying on the normal business and affairs of the former trust and matters incidental thereto, from and after December 1, 1953, to and including February 28, 1954, may be summarized as follows:

You were asked who were included within the term "agents". And I believe you replied Mr. Enright and Mrs. Hallberg. Is there anyone else

mony of Roy E. Hallberg.)

sen, who succeeded Mr. Harrison, and, of
naturally, as agents I think that would in-
the managers of the various apartments.

These petty cash funds that were kept at
individual apartment, please tell the court
function they performed. [244]

Enright: Objected to on the ground it is
material as to the function. The only question
they under his control. The court order was
in control.

Court: I kind of would like to know what
funds they were. Let's just get the picture

Enright: All right, your Honor.

Witness: These funds were in the hands of
managers who were managing each one of these
buildings. The funds were used to pay incidental
expenses they accumulated, or out-of-pocket money,
for small items which they picked up at the
building and used in the building could be paid for.

It was also used for cashing checks. Some of the
managers in the buildings would bring in their checks
and the managers would cash them from that petty
cash fund.

(By Mr. Whyte): You mentioned before
you considered those as part of the operating
expenses of the individual apartment houses

(Testimony of Roy E. Hallberg.)

Mr. Enright: He started to answer at the time.

Q. (By Mr. Whyte): You stated before you considered those petty cash funds as being part of the operating assets of the individual apartment houses. [245]

Did you so consider them for the reasons you have stated, namely, they performed the functions you have mentioned?

Mr. Enright: To which objection is made being incompetent, irrelevant and immaterial to what he considered. The question is was the money under his control.

The Court: Sustained.

Mr. Whyte: I have no further redirect examination, your Honor.

The Court: Next witness.

(Witness excused.)

Mr. Whyte: Mrs. Hallberg, would you take the stand?

Mr. Enright: Your Honor, I have two witnesses under subpoena that will be short. I would like to be accommodated.

The Court: If you wish to take that out of order, we will take the two short witnesses.

Mr. Enright: Mrs. Kennedy.

MAUDE KENNEDY

mony of Maude Kennedy.)

Clerk: Please be seated. Your full name,
?

Witness: Maude Kennedy. [246]

Direct Examination

(By Mr. Enright): Were you an employee
of E. Hallberg, Receiver, during the period
November 30th to and including February
1954? A. I was.

As an employee were you the manager of the
Green Arms Apartments?

That is right.

Would you state how many times you saw—
how many hours a day were your services
rendered as manager of that apartment

A. How many hours a day?

Yes. Are you there 24 hours a day?

That is right.

You have an assistant, is that it?

If I am not there the assistant was there.

In the ordinary course of business all occur-
ring at the apartment of a business nature, so
the owners are concerned, is reported to you?

That is right.

Now, on how many different occasions during
the period December 1, 1953, through February 28,
1954, did you see Mr. Hallberg?

(Testimony of Maude Kennedy.)

Mr. Hallberg picked up the rents and Mr. man asked me to cooperate with Mr. Hallberg they left.

Then I don't know what day that was on, think it was on a Saturday evening or a Sunday evening following, I happened to go out and I saw Mr. Hallberg and Miss Cosgrove in the lobby.

Mr. Hallberg introduced me to her and said she was going to take over the interior decorating and I would deal with her.

I never saw Mr. Hallberg again until the 6th of February, on a Saturday morning, and he came in and spent about an hour, and that is the last time I ever saw Mr. Hallberg.

Q. Now, directing your attention to a refrigeration problem that occurred or arose at the West Arms Apartment in February, I believe, of 1934. Did a problem arise concerning the refrigeration?

A. Yes. One of the apartments reported that the box was off. I called the company——

Q. I am concerned about the date, first, if you will pardon me.

A. It was either—it was on the 16th, and I came and turned the box off. I am sure that it was the 16th. [248]

Q. Now, just a moment, Mrs. Kennedy, if you please. A. O.K.

mony of Maude Kennedy.)

Now, my inquiry is this: Did you attempt to touch with Mr. Hallberg?

I did.

And for what period of time did you try to touch with Mr. Hallberg and/or Miss Cos-

I started trying to get in touch with Mr. Hallberg on the afternoon of the 17th, 18th and 19th and never was able to contact Mr. Hallberg.

About 5:00 or 5:30 on the evening of the 19th Miss Cosgrove called me and asked me if I had been trying to contact Mr. Hallberg, was something wrong with the refrigeration.

Yes, yes, I was, but I said, "It is all taken care of. I had to go ahead and decide for myself."

How did you try to contact Mr. Hallberg?

I tried to contact him through the office, and I called two different times out at his house, and I was never able to get him.

By the "office" you mean the office set up at the Oliver Cromwell?

A. Yes. [249]

Oliver Cromwell Apartments.

That is right.

Now, did you call Mr. Richman?

I certainly did on the morning of the 18th.

Concerning this subject matter of the refrigeration?

(Testimony of Maude Kennedy.)

A. He said I should go ahead and see what was done. I let the other people go and go to Daugherty, John Daugherty of the Normandy Refrigeration.

Q. You let the other refrigeration company and hired John Daugherty yourself?

A. That is right. And Mr. Hallberg called as near as I know it was on the morning of the 20th when he came in, and I explained to him what I did, and he said I did—that everything I did was perfectly all right.

Q. Now, when you used the words “can’t remember” was there a phone conversation or did he personally come over?

A. No, he did not come in the apartment; he called me on the phone.

Q. On the morning of the 20th?

A. Yes. I don’t know where he was. I judged he [250] was at the office.

Q. Directing to your attention to Miss McGrove’s activities, did she attend to some part of the Western Arms? A. Yes, sir.

Q. Would you explain in what manner or how she attended to it?

A. Well, she just hired painters to come and paint; most of it wasn’t successful.

Mr. Whyte: I am going to ask the last question of the witness be stricken as not responsive.

mony of Maude Kennedy.)

seems if you are going to paint something you
rily succeed in taking the paint off. So if that
something to her, something more to her
does to me, you can have her develop it.

(By Mr. Enright): Mrs. Kennedy, how long
you been a manager of apartment houses?

Since 1924.

In this community here?

That is right.

Apartment houses similar to the Western

A. A lot of it, yes.

That course of years, have you as manager
parted in the directing of the painting of
ments? [251] A. That is right.

Will you explain what you mean by success-
unsuccessful painting by Miss Cosgrove over
n these apartments?

Miss Cosgrove insisted on them using a paint
f the painters wanted to use. I called it water
I don't know what the name of it was.

she had a lot of trouble with the painters,
e the painters refused to use it. She wanted
o put it on with a roller and they refused
t.

he painters would quit and they would have
ahead and put this on, and it didn't cover,
en when you washed it, it washed off.

(Testimony of Maude Kennedy.)

Q. Now, did she bring out some paper for you?

A. Yes, but I didn't use them. They were something. I don't know, plastic tablecloths. I use them.

Q. Did she pick up the money at the apartment at the Western Arms Apartments?

A. Yes, she was the one that came in for

Q. Did she give you a receipt for the money she took? [252]

A. Well, sometimes she did and sometimes she didn't.

Q. You had a triplicate receipt for each rent collected, didn't you? A. Yes.

Q. Did she take those, one of the triplicate receipts, to her?

A. Well, sometimes she did and sometimes she forgot them.

Q. Whether she forgot them or not, she would take them with her sometimes?

A. That is right.

Q. Now, did you receive instructions from Cosgrove as to what you should do in case you needed supplies?

A. No. I just went ahead and ordered supplies like I had always done.

Q. Do you recollect a dispute with the Cosgroves concerning two-tone painting of one of the

mony of Maude Kennedy.)

ve told them what kind of paint they had to
nd they said they had never used it, and if
id use it they wouldn't stand good for it.

l, they did use it and it didn't cover, so I
Miss Cosgrove until it was repainted or some-
done to it I wouldn't show it.

he apartment sat there for almost a month
[253] she got the painters back again to do
inting over, and then they came in and put
kind of shellac or something over it, and they
eir money.

I had in mind the problem, if there was one,
harmonizing a color scheme in the apartment
Western Arms. I may be confused on that,
tone coloring.

Maybe you are thinking of 119. She said she
ing to do a trick deal in there, yes. She put
d of it yellow and the other brown, and to
has three coats and it still isn't covered.

Now, as to carpeting, did Miss Cosgrove
ome new carpeting, or did you have a dispute
able concerning some new carpeting?

No, there was never any new carpeting put
while Miss Cosgrove——

I was referring to the lobby.

Court: Which establishment is this?

Witness: Western Arms. In the lobby?

(Testimony of Maude Kennedy.)

A. Yes, and I rented the apartment couldn't get in touch with Miss Cosgrove, so I there was some old carpet that had been taken out of the lobby in the trunk [254] room. So Mr. Waddell come over and we took the carpet and he assured me I had enough there to cover Apartment 301, which was a large apartment.

Mr. Whyte: I am going to move the last stricken as hearsay, your Honor, what Mr. Waddell assured her.

The Witness: I talked to him.

The Court: I know, but he will have to come here to tell us. We can't take from you what he said. That is hearsay.

Q. (By Mr. Enright): You had a conversation with Mr. Waddell and then later you had him do some work on the carpeting? A. Yes.

Q. And you had it placed in the apartment?

A. That is right.

Q. So Miss Cosgrove didn't buy new carpet for that area. A. That is right.

Mr. Enright: You may cross-examine.

Cross Examination

Q. (By Mr. Whyte): Mrs. Kennedy, I believe you stated you saw Mr. Hallberg on only three occasions, the first one on or about December 1961 when Mr. Richman brought him in,—

mony of Maude Kennedy.)

The second occasion was on Saturday or Sunday following, when you met Mr. and Mrs. Hall—is that right? A. In the lobby.

And the third occasion on February 6th, on Sunday morning? A. That is right.

You are quite sure those are the only occasions upon which——

Those are the only occasions I ever remembering Mr. Hallberg.

Do you recall that on December 2nd Mr. Hallberg and I came to the Western Arms Apartment building and requested that—either December 2nd or December 2nd—spoke to you, met you and talked about your rents? Do you recall that, Mrs. Kennedy?

That was before Mr. Hallberg took over.

Do you recall having seen——

I certainly——

——Mr. Hallberg on that occasion?

I was stating the times I had seen him after he took over.

We all understand what your testimony was, Mrs. Kennedy. A. All right. [256]

There were occasions upon which you were in the apartment building, is that not correct?

Why, certainly.

You had an assistant manager?

(Testimony of Maude Kennedy.)

A. Well, one day a week.

Q. Was it only one day a week or was it often that you were away and left the apartment in charge of your assistant?

A. Every other Friday and every other Saturday. I didn't necessarily go away; I wasn't on duty.

Q. Did you have an apartment there?

A. Yes, right facing the lobby.

Q. Now, when you say every other Friday and every other Saturday, by that do you mean to say that you were never out of the apartment house on any other occasion except on every other Friday and every other Saturday?

A. I am trying to say that any time I was out the assistant was there. It never was alone.

Q. I am trying to find out how frequently you were out when the assistant was left alone in the apartment.

A. I told you—— [257]

The Court: What he wants to get is how many times you wouldn't be there and the assistant was alone. Would it happen that you would go out for an hour or two or would you go out for a morning or a noon during the week, other than your day off?

The Witness: Very, very seldom.

The Court: Did you have a division of time when you were on duty and time your assistant was on duty?

The Witness: That is right.

The Court: What was that division?

mony of Maude Kennedy.)

Court: Thank you.

(By Mr. Whyte): I didn't quite catch your answer, Mrs. Kennedy.

Whyte: Will you read the answer, please, Reporter?

(The answer was read.)

Enright: You were off duty every other noon for two hours, and you were off duty every other Friday and Saturday, is that right, Kennedy?

Witness: I was off duty, yes.

(By Mr. Whyte): Now, during those periods when you were off duty, did you ever leave the apartment building? A. Very seldom. [258]

Where would you be, in your room?

That is right.

So that if Mr. Hallberg or Mrs. Hallberg came into the lobby of the apartment building at those times, when you were off duty every other noon for two hours and every other Saturday and every other Friday, you wouldn't have seen them, would you?

No, but my assistant would.

You mentioned the fact that you would order suppers. From what did you pay for those suppers, Mrs. Kennedy?

It was paid from the office. We dealt with West Coast, and when I speak of suppers, I

(Testimony of Maude Kennedy.)

Q. Did you have a petty cash fund at the o

A. I certainly did.

Q. About how much did that fund consist
your apartment? A. \$100.00.

Q. What other items did you take care o
sides paying for supplies, such as soap, out of
petty cash fund?

A. We did not pay for soap out of our
cash. The West Coast bill was taken care of
the office. [259]

Q. I misunderstood you then. Just tell me a
what you used your petty cash fund to pay f

A. We charge a dollar deposit on every key
is given the tenant. When they move out we r
that. That goes in with the rents.

When they move out we refund them a d
on each key, which is taken out of the petty

Q. What else did you use petty cash for?

A. Any little bills that might come up tha
had to pay petty cash. The assistant, the h
keeper, she did all the curtains, which was pai
of petty cash.

Q. Did you ever cash checks out of petty c

A. Never. No checks ever were cashed o
petty cash.

Q. Anything else that you ever did with
cash, any other disbursements except—

A. Well, we paid, give the can man every

mony of Maude Kennedy.)

Thank you.

Because there is always stuff that we want out of the apartment house, and that way he take anything we give him. So we pay him a extra; that is taken out of petty cash. [260]

Well, let's see whether we have them all. I referring now to the things that you paid for petty cash. You made refunds on the keys?

That is right.

You took care of little bills?

That is right. If someone came in, like we extra help from the employment agency, that paid out of petty cash.

All right. Extra help from the employment , that is another item?

That is right. When they came in for, Mr.— and a man that came in there and washed the ws. I can't say his name right now. He washed a walls down, and that was all paid out of cash.

Washing windows and walls, paid from petty

Or when a kitchen or bath had to be washed.

And the can man was paid from petty cash?

That is right.

And the curtains were paid for from petty

A. That is right.

(Testimony of Maude Kennedy.)

wanted to either get a check cashed or want to pay rent with a [261] check and get some change back, or something of that kind? Did you have transactions of that sort?

The Witness: No, we didn't do that sort of thing at all. And the tenants understood they could have checks cashed at the house.

The Court: You never did that kind of business?

The Witness: That is right.

Q. (By Mr. Whyte): I understood you testified that there was no other fund on hand at the time of the payment from which you could have taken care of the refunds, the little bills, the can man, the extra for window washing or walls, the curtains and the other items you mentioned payable out of the cash, no other funds?

A. No; that is right.

Q. If you hadn't had that petty cash fund, would there have been nothing from which you could have paid any of those items then?

Mr. Enright: Objected to on the ground that it is incompetent, immaterial and irrelevant.

The Court: Sustained.

Mr. Whyte: Your Honor, it goes to show, of course, that when Mr. Hallberg did not take care of the managers of these apartment houses their cash funds at the time he relinquished his responsibility, he did not do so for the very good reason

mony of Maude Kennedy.)

Court: I don't mean by the ruling to ex-
that theory. I just think the immediate ques-
as not good.

Whyte: Very well, your Honor.

Court: I am not accepting that theory for
ment, either. I am just not passing on it.

(By Mr. Whyte): Mrs. Kennedy, did you
ave occasion to go out to the West Coast
lty Company to pick up any supplies?

I certainly did.

And when did you do that?

Whenever I needed something quickly and
't get a delivery on it, I often did it.

You did that sometimes on days which were
ur regular days off?

say you had two hours off every other after-
nd every other Friday and every other Sat-
you had off. Let's suppose that you had some-
you had to get from the West Coast Specialty
ny on Monday afternoon, and you were in
y for it, would you go out to West Coast Spe-
and get it?

Enright: Objected to on the ground the
on is argumentative, compound, vague and in-
e, and uncertain, unintelligible.

Court: Do you understand the question,
Witness? [263]

Witness: No.

(Testimony of Maude Kennedy.)

for two hours and every other Friday, every Saturday.

Now, let's suppose on a Monday afternoon of the afternoons which was not your regular noon off, you found that you had to purchase something from the West Coast Specialty Company and it was urgent, would you go and get it on occasions?

A. I would always get it on my time off. plenty of time off to get it.

Q. I am asking you whether or not you went to get things at the West Coast Specialty Company on days which were not your regular off.

A. Not that I can remember of.

Q. At the time Mr. Hallberg assumed his position as Receiver, on or about December 1, 1953, can you recall how many vacancies there were at the Eastern Arms Apartments?

A. No, I cannot.

Q. Do you have any records with you that would show that?

A. I have no records with me.

Q. Do you have any records at the Eastern Arms Apartment—

A. I certainly do. [264]

Q. —that would show your vacancies?

A. They certainly should; my ledger should.

Q. I am going to request, Mrs. Kennedy, that you return and bring with you the records of the Eastern Arms Apartment building which will show the vacancies.

A. Yes, Mr. Hallberg.

mony of Maude Kennedy.)

g the three-month period of December, January and February, during which Mr. Hallberg was in charge of the apartments.

Will you do that, please?

Enright: Will you, Mr. Whyte, obtain permission for this manager, from counsel in the court—who is representing the owner. They have custody of the records, Martin, Hahn & Camusi, attorneys for the plaintiff.

Powsner: I am not aware that the records are in any place but the apartment house. I will obtain them, if I can. If they are in our possession we will have them.

Whyte: I would like to question Mrs. Kennedy with reference to them. Do you have any objection to her bringing them in?

Powsner: Not in the least.

Whyte: I will ask the court to instruct Mrs. Kennedy to return for further cross examination, bringing those records with her, of the vacancies during the three months when Mr. Hallberg was occupying the apartment. [265]

Enright: I object to that on the ground it does not either tend to prove nor disprove any point in issue here.

Court: It might tend to prove the success or failure of Mr. Hallberg in keeping a place filled

(Testimony of Maude Kennedy.)

The Court: It is just something I think would have to find as a result of a line of inquiry.

When can you conveniently follow out that quest?

The Witness: Well, any time that you say.

The Court: Can you go out and get them get back this afternoon?

Mr. Enright: I might state to the court witness has been under subpoena. I understand has a heart condition.

Is that right?

The Witness: Yes.

Mr. Enright: I didn't bring her in yesterday. I want the court to know it beforehand. I am she will be here. I had to delay her one day.

The Court: How about Monday at 11:00 o'clock?

The Witness: See, I am just giving up the aging of this building as of tomorrow night, and had promised Mr. [266] Udall, the man the overseer right now, to be there to talk to the manager Monday morning.

The Court: How about Monday afternoon?

The Witness: That would be much better.

The Court: 2:00 o'clock Monday.

The Witness: That would be better.

The Court: Thank you.

Q. (By Mr. Whyte): Mrs. Kennedy, you something about Apartment 119? A. Yes.

mony of Maude Kennedy.)

Was it vacant?

It was vacant and I had it rented. It was
d and I rented it.

With reference to the painting, was it vacant
it was painted, immediately before it was
d? A. Yes.

When was it painted?

The people moved out. I had it rented, and I
Miss Cosgrove and told her I had to get the
ment painted immediately, and she said she
be out, and I said, "I can't wait."

Whyte: I am going to move the answer be
en [267] as not responsive.

Enright: I submit the answer is responsive.

Court: Motion denied. You may inquire
er.

(By Mr. Whyte): When was the apartment
ed, Apartment 119?

It was started about a day or two days after
s vacated.

Was it in December? Was it in January?

Now, I don't remember.

It was sometime during Mr. Hallberg's ten-
s Receiver that it was painted?

That is right.

Was the apartment vacated immediately be-
t was painted? A. I told you

(Testimony of Maude Kennedy.)

A. Miss Cosgrove. She said she would be and pick the colors.

Q. After the apartment was painted, how did you rent it?

A. I had it rented before it was painted.

Q. Now, I have understood you to say, and have an opportunity to correct your testimony, I am misinterpreting it—I don't want to put words in your mouth at all—I understood you to say the apartment was vacated immediately before it was painted. Is that correct or is it not?

A. I said it was vacated immediately before it was started to be painted.

Q. Well, the apartment was vacated. Was it vacant after it was vacated?

A. It must have been.

Mr. Enright: I object on the ground it calls for a conclusion of the witness; it is argumentative.

The Court: It would necessarily be for a moment. Once you vacate something, there is no question there.

The Witness: May I say something?

Q. (By Mr. Whyte): Please just answer the questions, Mrs. Kennedy. Was the apartment vacant after it was vacated? A. Yes.

Q. Then about two days later it was painted. Mrs. Hallberg's request, is that right?

A. At my request.

mony of Maude Kennedy.)

(The record was read.)

Enright: I would like to have the previous questions [269] and the witness' previous answers, be informed—these are not her words—Miss Kennedy says the apartment should be painted. Counselor's question now is a play upon words, as to who painted it.

(The record was read.)

Court: I recall that. I don't think that it is a very subtle thing to observe; it's rather open. The court will take our afternoon recess.

(Short recess taken.)

By Mr. Whyte): Referring to this Apartment 19, after the apartment was painted, someone moved in, a tenant moved in, Mrs. Kennedy? A tenant moved in. May I explain it?

That is all. That is all, you have answered the question.

Has it been rented ever since then, so far as you know about that apartment? A. It has.

Does it look pretty smart? A. No.

But it has been rented continuously?

It was rented continuously before.

It has been rented continuously since it was painted, is that correct?

That is right. [270]

Did I understand you to testify in my cross examination that you suggested a fact about the apartment?

(Testimony of Maude Kennedy.)

A. I said it was vacated and I called Miss Cosgrove and told her I had to have it painted immediately, because I had it rented.

Q. Now, how long did it remain vacant?

A. Just long enough to get it painted. I had the lady living in 204 waiting for 119 when it was finished.

Q. Was Apartment 119 painted with this paint that you referred to? A. It was.

Q. That water paint is put out by the Glidden Company, is it?

A. I have no idea who it is put out by.

Q. Are you still the manager at the West Arms, Mrs. Kennedy? A. I am.

Q. Now, with reference to this matter of refrigeration, you testified on your direct examination that you tried to get Mr. Hallberg on the 18th, and the 19th of February, both at his office at the Oliver Cromwell and at his home, without success?

A. That is right. There were two days altogether [271] that we tried to get in touch with him and never succeeded.

Q. Is it two days or is it three days?

A. I was talking about when the refrigeration had started to go out. And that was on the 16th. Miss Cosgrove was in there either the 16th or the 17th and saw the men working on it.

Q. The refrigeration went out on the 16th.

mony of Maude Kennedy.)

and when I told her what had happened she
When I was in there I saw men working on
refrigeration machine." But I didn't know then
they were going to say that it was such a big
and then——

Let's try to get our facts straight here. The
refrigeration went out on the 16th.

That is right; one box did.

When did Mrs. Hallberg come in?

Well, I don't know whether she came in on
the 16th or on the 17th. She came in to collect the
money and went out through the basement.

It was either the 16th or 17th?

That is right.

Did she see the workmen working on the
refrigeration?

She saw these people from the California,
they were [272] servicing the house.

Thank you. Now, you tell me that you at-
tempted to reach Mr. Hallberg by telephone at his
office or at his home?

That was either the 18th or 19th or the 17th
or the 16th, I am not sure which it was. But I think
it was the 18th and 19th, the two days we tried
to get the money found out that this was going to run into
a lot of money.

Consulting my calendar I find that the 18th
and 19th were a Thursday and a Friday. Does that

(Testimony of Maude Kennedy.)

Hallberg at his office, did you receive any re your telephone call?

A. Why, only Mr. Harrison; took all my sages.

Q. Was it Mr. Harrison who answered the phone at the office on the 18th?

A. That is right.

Q. When you called on the 19th Mr. Ha answered the telephone? A. That is ri

Q. How many occasions did you try, or many occasions did you try to reach Mr. Ha at his home on either the 17th or 18th or the and 19th?

A. I called him both days at his home, and was [273] no answer.

Q. About what time did you call him?

A. That I would not know now. I would it was in the mornings.

Q. In the morning, you say?

A. I imagine it would be in the morning. I tell you for sure.

Q. You recollect whether you telephoned home in the evening?

A. I didn't try to get him in the evening. the messages at his office.

Q. What message did you leave with Mr. rison?

A. To get in touch with him some way, and

mony of Maude Kennedy.)

Whyte: I move that be stricken as hearsay, Honor.

Enright: I object to it being stricken. It is responsive to the question.

Witness: That was the only way I had of getting Mr. Hallberg, is through his office.

Court: The answer is stricken, that portion of the answer. It is not responsive. The witness has made an improper answer, which I think is.

Whyte: No further cross examination.

Redirect Examination

(By Mr. Enright): Mrs. Kennedy, how far is it from Western Arms to the West Coast Spe-

? A. About five blocks.

Do you have an automobile?

Yes, I do.

It is available to you there at the Western Arms?
? A. Yes.

Did your assistant manager ever report to you that Mr. Hallberg had been at the building—

Whyte: Objected to as calling for hearsay.

Enright: It is a report in the due course of business in the operation of this property, one of the duties of the agents of the Receiver.

(By Mr. Enright): Did your assistant manager ever report to you, please hold up your ex-

(Testimony of Maude Kennedy.)

lained, or your Friday or Saturday that you
every other week——

Mr. Whyte: Objected to as hearsay,
Honor.

The Court: Overruled.

Do you understand the question?

The Witness: Do I answer? [275]

The Court: You can answer it yes or no.
can't tell the full conversation.

The Witness: Yes.

Q. (By Mr. Enright): And what was the r
you received from the assistant manager?

Mr. Whyte: Again objected to as calling for
dence that is hearsay.

The Court: This is to show a report wa
ceived. I think this is one of the exceptions t
rule.

Mr. Enright: Very well, your Honor.

The Court: You may answer.

The Witness: One time.

Q. (By Mr. Enright): Go ahead and ex
your answer.

A. One time when I came back, I think it
in the evening—I am not sure—Mr. Hallberg
Mr. Harrison were there and went through for
five apartments.

Q. That was the report?

A. That was the only time

mony of Maude Kennedy.)

(By Mr. Enright): That was the report you
ed? A. That is right.

Concerning this painting at 119 Apartment,
ou participate in or hear a conversation be-
Miss Cosgrove and the painter? [276]

Well, I did on several occasions. But may I
t that? That was paint that was only put on
iving room, because I had the bath, dressing
and bedroom done before she came out there.

Before Miss Cosgrove came out?

Yes, and it was done in the oil paints.

Did you have any conversation with her con-
g the painting of the living room?

I was not in there when she chose the paint.
ainter came out and told me what she wanted
o use.

But did you have a conversation with Miss
ove before the painting of the living room of
n which she gave you some instructions con-
g the living room?

She gave it to the painter, the instructions.

I know she did, but did she tell you, if I may
ou, "Do not let the painter paint the living
" because she wanted to give him some par-
r instructions?

She said she was going to do a trick deal

(Testimony of Maude Kennedy.)

tween the painter that did the trick deal in
living room of 119? A. Part of it.

Q. State what was said.

Mr. Whyte: Just a moment. [277]

Mr. Enright: This is a conversation between
painter and Miss Cosgrove.

Q. (By Mr. Enright): Is that right?

A. That is right.

Mr. Whyte: I am objecting, no proper foundation has been laid to show this woman was present at the conversation about which she is going to speak.

The Court: Is this the conversation which you heard?

The Witness: Yes.

The Court: Who else was there?

The Witness: The painter and the man that was helping him; he had a helper there.

The Court: And Miss Cosgrove?

The Witness: That is right.

The Court: You may relate the conversation.

The Witness: Well, she wanted him to put water—

Q. (By Mr. Enright): Try and say, the best you can, what she said and what he said.

A. Miss Cosgrove wanted him to use this water paint, and he is an old Swedish fellow that learned his trade in Europe, so, naturally, he didn't

mony of Maude Kennedy.)

Court: You can tell what they said, but as variations of the character of the people and backgrounds [278] in Europe and so on, we take that as part of the conversation.

Witness: O.K.

By Mr. Enright): State as best you can the painter said and Miss Cosgrove said.

So the painter said, all right, he would use it wouldn't cover.

He went out and got him a card of the colors, he went out and got brown for the walls and for one other wall—I mean one end of it. I don't like yellow.

Now, what is the name of that painter?

Mr. Erickson, Carl Erickson.

Was he still doing painting at the apartment after this event, painting 119?

He didn't do any more painting for Miss Cosgrove.

Did the tenants state—as I understand, there was a tenant in 204 you had rented 119 to?

That is right. I put her in there waiting.

What did she say about the painting of 119 apartment?

Whyte: I object to that as calling for hearsay evidence.

Enright: Report of the

(Testimony of Maude Kennedy.)

position [279] is Miss Cosgrove has done an excellent job of decorating and painting here.

We have a report of the tenant of the apartment how they liked——

Mr. Whyte: I don't know what exception to the hearsay rule you are talking about. If you are talking about the reports kept in the regular course of business, then you haven't laid any sufficient foundation for showing reports were kept in the regular course of business by the manager of the apartment building, as to what the tenants said.

You will have to produce the books and identify this woman as the custodian, and that the entries were made in the regular course of business.

I submit no exception to the hearsay rule has been fulfilled here, your Honor.

The Court: I think as to this inquiry it has been.

Q. (By Mr. Enright): Were you present at the time when a conversation was had between the tenant or the painter with Miss Cosgrove concerning the satisfactory or unsatisfactory manner in which that living room in 119 was painted?

A. He went back and did the walls over again after the tenant got in.

Mr. Whyte: I move the answer be stricken as not responsive to the question.

The Court: May I have the question?

(The question was read.) [280]

mony of Maude Kennedy.)

so you understand, is, were you present at the time when there was a conversation? You see, could answer yes or no, you were present when the conversation—— A. Yes.

You were present when there was a conversation? A. Yes.

Who was the conversation between?

The painter and the tenant. You mean after the painting?

Yes. A. Yes.

At any one of these conversations was Miss Kennedy present?

No, she never saw the tenant.

Is the tenant still living there?

Yes.

Was the apartment living room painted after the first painting?

Yes, it was.

You had a request from the tenant to have the living room repainted?

Yes, because it wasn't covered. [281]

Will you be the manager and in control of the Western Arms' books on next Monday?

No, I won't.

Your employment at the Western Arms—— I resigned as of tomorrow night, the night of the 15th.

Enright: I might point out to the court that

(Testimony of Maude Kennedy.)

Cromwell Apartments, and they are available to them if they want to bring them in.

The Court: Apparently, this lady will not have the authority to comply. She will not have the authority on the part of the employer to possess the records on Monday afternoon, so we can't hear her at that time, unless the term of her employment be extended.

Mr. Enright: If they want to bring in the books, I am quite certain the lady will come down here Monday.

Q. (By Mr. Enright): You will, won't you, if somebody wants to bring in the records——

A. Certainly. I just wanted you to know I have no right to do it.

Mr. Enright: Will you bring in the book Whyte, for her testimony?

Mr. Whyte: I don't have the books, Mr. Enright. [282]

Mr. Enright: The court order is that the books be kept and records be kept out at the Oliver Cromwell Apartments. So far as I am concerned, the books are there in the custody of the plaintiff. That has never been vacated.

The Court: I don't know that the court has made any order with respect to that.

Mr. Enright: Yes.

The Court: The court dismissed the action. The books are to be kept at the Oliver Cromwell Apartments.

mony of Maude Kennedy.)

a dismissal of that portion of the case you
l, there was not an adjudication, so the court
done anything by way of ordering things
ntact, except the court has exercised its jur-
on over its Receiver.

Enright: I thought that included the books
ecords. That was my interpretation of the
I may be in error. I appreciate your Honor's
ent about the dismissal of the action.

Whyte: Somehow we will have to arrange
is book which Mrs. Kennedy has referred to
ought in, whenever the court wishes to re-

Enright: Yes. I would say this witness, I
her, and she has not control of those books
nday.

Court: She will be excused at the conclusion
3] her testimony today. If you want to call
ack again you can.

Enright: I am through with the witness at
me.

Whyte: I want her to come back, to testify
reference to the books which are presently
her control.

Court: Please be here on Monday at 2:00
k.

Witness: Yes. But I can't bring the books,

(Testimony of Maude Kennedy.)

Mr. Enright: That is all.

The Court: They will have to make the arrangements.

The Witness: That is on the monthly report I send in the monthly report every month to Hallberg, and the vacancies were on that.

The Court: Well, they can produce the report but they apparently want you, too.

The Witness: I see.

Mr. Enright: Step down.

Mr. Whyte: I have a question or two, Mr. Enright.

Recross Examination

Q. (By Mr. Whyte: You are leaving the Fern Arms tomorrow night, Mrs. Kennedy?

A. I have resigned as of the night of the 15th.

Q. You have turned in a written resignation?

A. I certainly did.

Q. You weren't by any chance requested to leave, Mrs. Kennedy?

A. I told you that I resigned.

Q. You haven't answered my question. Did you request to leave? A. I was not.

Mr. Whyte: I have no further questions.

(Witness excused.)

Mr. Enright: I have another manager. I am short. All I am going to find out is the number of

EDNA LIPPHARDT

as a witness on behalf of the defendants, have been first duly sworn, was examined and testimony follows:

Clerk: Please be seated.

Q: Your full name, please?

A: Witness: Edna Lipphardt; L-i-p-p-h-a-r-d-t. I am a little hard of hearing.

Q: The Court: The witness requests that you stand close to her, because she is hard of hearing. Don't overlook the reporter has to get everything and it is a tendency to speak down when you are close to a witness. [285]

Direct Examination

Q: (By Mr. Enright): Mrs. Lipphardt, were you the manager of the Fountain Manor Apartments during the period November 30, 1953, through January 28, 1954? A. Yes.

Q: Have you been an apartment house manager some period of time in this community?

A. Yes.

Q: How long? A. Since 1930.

Q: Did you have occasion or did you meet Mr. Berg on or about December 1, 1953?

A. Yes.

Q: On how many occasions did you see Mr. Berg at that apartment house during the period December 1, 1953, to and including February 1, 1954?

(Testimony of Edna Lipphardt.)

Q. Were you introduced to Miss Cosgrove on December 1st? A. Yes.

Q. State what was said at the time of the introduction.

A. He told me Miss Cosgrove would be in charge of all the decorating, that she was his right hand and that she would [286] supervise the building for him.

Q. Did she, Miss Cosgrove, collect the money from you as the manager?

A. Not from me personally, no; from the clerk who took care of the books.

Q. Now, did Miss Cosgrove purchase some supplies for the particular apartment house you were managing? A. Yes.

Q. And directing your attention to the fiber draperies, that subject, were some purchased?

A. Yes.

Q. And the cost of those draperies, if you know?

A. Yes.

Q. What was the cost?

A. The cost, one particular pair I know of was \$29.75; at least, that was the tag on the drapery. Whether that was actually what she paid or not I don't know. That was the tag on the drapery.

Q. You said twenty-nine. Did you mean twenty-three?

A. There was one \$29.75 and one \$23.75.

mony of Edna Lipphardt.)

draperies around \$6.95, \$7.95, and maybe as
s \$10.50.

Did you have any difficulties concerning
ing [287] while you were manager in that pe-
e time?

Yes, we had four different sets of painters
three months.

Who brought those or employed those paint-
A. Miss Cosgrove.

Were there any holding up of the renting of
f the apartments while they were being
d? A. I beg your pardon?

Was there any holding up of the renting of
ments for their being painted?

Yes, there was one particular apartment that
d ready—in fact, had rented. We had no
to put in the apartment and there were no
ies. It stood idle for a week, waiting for

Cosgrove had promised to bring the lamps
he Oliver Cromwell, another apartment house.
she brought them they were three very small
amps, and two of them had no shades what-
and for the third one there was a bridge
shade.

Now, directing your attention to the subject
of a petition to redecorate certain

(Testimony of Edna Lipphardt.)

Mr. Whyte: Objected to as calling for the conclusion of [288] the witness.

The Court: Sustained. The answer is stricken.

Q. (By Mr. Enright): All right. Did you report to Miss Cosgrove or to Mr. Hallberg that the tenants had moved out of that apartment house because the apartments were dirty or unclean?

A. I did not.

Q. Did Miss Cosgrove call you after a hearing of a petition here and ask you to sign a statement pertaining to that subject matter?

A. She came to my apartment with a statement.

Q. Prepared statement she asked you to sign?

A. Yes.

Q. State the conversation that occurred.

A. I refused to sign the statement, saying that the tenants had moved out because of the condition of the apartments, that that was not true.

Then there was another part to the statement about a stove; there was a discussion about a stove.

Q. This is a conversation you had with Miss Cosgrove? A. Yes.

Mr. Whyte: I am going to move to strike the answer to the effect that the tenants had not moved out because of the condition of the apartments. As to the reason why the tenants moved out, that will be entirely beyond the knowledge of [289] this witness. It is her conclusion, purely and simply.

mony of Edna Lipphardt.)

Whyte: Part of what she testified to in the answer, Judge, was apparently a conversation, don't think that what she said about her conversation, as to whether they moved out, purports to state either she said or Mrs. Hallberg said. However, I will let the record speak for itself.

Enright: Yes, the record will speak for itself. I asked the question, did this witness ever tell Miss Cosgrove or Mr. Hallberg that tenants moved out of that apartment house because the apartments were dirty, and her answer was no.

Now inquiring about the conversation had between Miss Cosgrove and this witness after that time before your Honor.

(By Mr. Enright): What was the conversation you had with Miss Cosgrove concerning the matter of a stove?

An apartment was vacant. The stove was in poor condition. Miss Cosgrove said, told me she was going to order a new stove.

At the meantime I rented the apartment and the tenants moved in at the same price we had always charged for the apartment. About five days after the tenants had checked into [290] the house a new stove was delivered and placed in the apartment. The tenants didn't rent the apartment because a new stove was put in there. That was the basis of con-

(Testimony of Edna Lipphardt.)

The Court: That was not the reason the
ment was rented, that that was a bone of cont
is stricken.

Q. (By Mr. Enright): Was that the subj
the conversation you had with Miss Cosgrove
time she asked you to sign this written state

A. Yes.

Mr. Enright: May I ask the testimony be
stated?

Q. (By Mr. Enright): Did you hear any
versations between any one of these four dif
painters and Miss Cosgrove during this three-
period? You could answer that yes or no, w
you heard the conversation.

A. Yes, I heard them.

Q. Were there more than one conversation
the painters?

A. Yes, there were quite a few; not only
versations but arguments.

Q. Well, that is a conclusion, Mrs. Lipp
Now, will you state, as best you can recolle
substance, the words used by Miss Cosgrove a
painters, commencing with the first conversati

A. The first painters that we had in the bu
working was the Superior Paint Company
Kelly, and a man working for them. The part
work being done was a dinette being painted

Miss Cosgrove objected to the degree of
This was a pale green and sh

mony of Edna Lipphardt.)

l off the job.

Now, please state the next conversation and what you observed, but, as best you can recollect what was said by Miss Cosgrove.

I think the next group, Mr. Brewer and a Crovanshore; they again did work that Miss Cosgrove did not like.

What did she say? You must tell us what she said. A. I see.

That is the point. That is the point.

She didn't like the colors. The painters couldn't get the degree of color she wanted, or the right tone in the color.

That was the substance of the conversation? Yes, sir.

What happened to those painters?

They quit. Or she fired them; I am not sure of that. But, anyway, they were off the job.

Is that in substance the conversations that you had with the other painters?

I beg your pardon?

Was that the substance of what was said?

Yes, that seemed to be the main objection, was the color.

Do you recollect a conversation being had by Miss Cosgrove and the painters concerning painting monument 323?

(Testimony of Edna Lipphardt.)

living room, in particular, and Mr. Kelly refused to do it because he said the paint was too good on the wall and it didn't need painting.

Q. What is Mr. Kelly's first name?

A. That I don't know.

Q. What is his employer's name?

A. The Superior Paint Company.

Q. They are here in Los Angeles, are they?

A. Yes.

Mr. Enright: You may cross examine. [29]

Cross Examination

Q. (By Mr. Whyte): Mrs. Lipphardt, are you still employed as the manager of the Four
Manor Apartments? A. No.

Q. May I ask when you left that position?

A. What?

Q. May I ask when you left that position?

A. On March 1st.

Q. Were you discharged by Mrs. Tidwell?

Mr. Enright: To which objection is made?

The Witness: Yes; Mr. Udall.

Mr. Enright: —on the ground it is incompetent, irrelevant and immaterial whether Mr. Udall, Mrs. Tidwell or anybody else doesn't believe this witness. It is immaterial as to her rendering services to this Receiver.

mony of Edna Lipphardt.)

Whyte: That was the purpose of the question, your Honor.

(By Mr. Whyte): You mentioned a Mr. [redacted] a painter, who walked off the job.

Yes.

Isn't it a fact that you told Mrs. Hallberg [redacted] 294] wanted to get rid of Mr. Kelly on that

A. No.

Didn't you tell Mrs. Hallberg that Mr. Kelly was a friend of the former manager and that you wanted him around? A. No.

How long had it been before December 1, 1904, since the apartments had been painted at the Main Manor?

Now, let me understand your question.

Surely.

You mean any apartment in the building?

Yes. Can you tell me how often the apartments were painted under Mr. Richman?

Whenever they needed it.

Let's take a particular apartment. About how long did each apartment go, in point of time, before it would be repainted?

That would be dependent on the particular apartment. One apartment might be dreadfully old and might have to be painted in six months, another might go two or three years. It de-

(Testimony of Edna Lipphardt.)

A. I am just speaking—you almost asked hypothetical [295] question, and I am answering it that way.

I said an apartment might become so soiled in six months, and have to be done, and another might go for two years.

Q. In either event, at the expiration of six months or six years or a few years the apartments would become dirty in appearance?

A. That is right.

Q. So that from time to time there were individual apartments at the Fountain Manor that were dirty in appearance?

A. Yes. Now, for instance, I might even bring up one that you may bring up later. Apartment 117, the bathroom needed painting very badly. The lady that lived there was an elderly lady who could not stand the smell of paint, and she asked us to come and paint it while she was in the apartment. Naturally that was in bad condition.

And another one you might bring up was Apartment 117. The man there was afflicted with a nervous ailment and he didn't want any work done while he was there.

Q. Now, how did you find your vacancies at Fountain Manor, Mrs. Lipphardt? What was the percentage of vacancy in the apartment building during the six months immediately preceding

mony of Edna Lipphardt.)

[296] apartments were vacant at any one

Yes, we would carry—I don't know percent—
it we would carry two or three vacancies.
might go as high as five, and then maybe we
get down to one.

This was prior to December 1, 1953?

Yes. But you must remember we had 42
s and 6 triples, and big apartments naturally
rent more often than small ones. We would
e and six vacancies.

How was your vacancy factor from Decem-
ber 1, 1953, up to February 28, 1954?

There again, as I say, we ran—we might
go as high as six, seven or eight at one time,
then be down again to two.

Was it about the same vacancy factor as had
prior to December 1st?

Yes, just about.

Whyte: Just a moment. I don't think I
any more questions, but I would like to speak
client a moment.

(By Mr. Whyte): Do I understand you to
rs. Lipphardt, that the maximum time during
an apartment would be left unpainted was
three years?

I don't think I said it would be left un-

(Testimony of Edna Lipphardt.)

am just a poor lawyer and I don't really about these matters of managing apartment ings.

In any event, there were occasions when an ment in the Fountain Manor would go for three years without having been painted?

A. I wouldn't be sure of that, without l up the records.

Mr. Whyte: I think that is all, Mrs. Lipp You may step down as far as I am concerne

Redirect Examination

Q. (By Mr. Enright): Are you employe Mrs. Lipphardt? A. I beg your pardon

Q. Are you presently employed?

A. Oh, yes.

Q. Where? A. At the Lakeview Ar

Q. Are you manager? A. Yes, sir.

Q. Apartment house? A. Yes.

Q. You have been there quite a while?

A. Yes; 94-unit building.

Q. Concerning this vacancy factor, do yo ollect [298] how many vacancies there were the Receiver took over, that day as compare the vacancies on the day he left, February 2

A. Without looking at the records, as nea can remember the day he took over, we ha vacant, which was being painted at the tim

mony of Edna Lipphardt.)

ou have been managing apartments in this
nity, that there is not as great a vacancy fac-
the winter months as there is in the summer

? A. That is true.

Enright: No further questions.

Whyte: No further questions.

(Witness excused.)

Enright: Thank you for accommodating
two witnesses.

she be excused?

Court: Yes.

Whyte: Shall I call my next witness, your
?

Court: Yes, please.

Whyte: Mrs. Hallberg, will you take the
please? [299]

CATHERINE COSGROVE HALLBERG

as a witness on behalf of the Receiver, hav-
en first duly sworn, was examined and testi-
follows:

Clerk: Please be seated.

e full name, please?

Witness: Catherine Cosgrove Hallberg.

Direct Examination

(By Mr. Whyte): You are the wife of Mr.
Hallberg, the Receiver in this action?

(Testimony of Catherine Cosgrove Hallberg.)

Q. Where did you go to school, Mrs. Hal

A. University of Minnesota.

Q. Did you receive a degree there?

A. I received a degree of Bachelor of Business Administration.

Q. In what year? A. 1932.

Q. Will you please state what, if any, business experience you had following your graduation from the University of Minnesota in 1932?

A. Yes, I was statistician for a branch office of Payne Weber & Company, and then in New York I was an account [300] executive or investment counsel with Johnston & Longquist.

Q. Were you at that time one of two women investment counselors in New York?

A. Yes, based on the fact there were just two women in the organization of the Investment Counsel Association of America, when it was founded in 1938, or something like that.

Q. How long did you keep up your investment counseling work in New York?

A. I continued working until about 1942, shortly before our daughter was born; longer than that but——

Q. For how long had you been employed by Johnston & Longquist?

A. Until about 1940, I think.

Q. My question was for how long had you

mony of Catherine Cosgrove Hallberg.)

Had you had, Mrs. Hallberg, prior to this relationship?

Just the decorating experience, now?

Yes. Take decorating first and we will take keeping later, if that is necessary. Just decorating.

Well, from an early interest in the subject I went to the course at the Traphagen School of Design, as a consultant to a general overseeing of certain duties that some of [301] our clients had at Johnston & Longquist. We had a real estate firm employing them, but Mr. Johnston was interested in overseeing the real estate firm, to doing our various apartment buildings, assisting friends. I haven't been in for it commercially.

You mentioned the Traphagen School of Design. Where is that located?

That is in the 40's on Broadway in New York.

For how long did you attend that institution?

That was during the course of the one school.

What year was that?

It was just while I was at Johnston & Longquist. It was approximately '39, I believe.

How often did you attend classes there, Mrs. Hallberg?

(Testimony of Catherine Cosgrove Hallberg.)

Mr. Whyte: May I have the incinerator please, Mr. Enright?

Mr. Enright: They are here some place. Mr. Richman could help you. I am not familiar with them myself. Martin, Hahn & Camusi introduced them.

Mr. Whyte: The Canterbury, Mr. Richman.

Mr. Enright: You have the Oliver Cromwell.

Mr. Whyte: That is what I want.

Mr. Enright: You said the Canterbury.

Q. (By Mr. Whyte): Mrs. Hallberg, I call your attention to a file marked Oliver Cromwell Incinerator, and ask you whether you have seen that before?

A. Yes, I have, in the office.

Q. I show you a copy of a letter dated December 30, 1953, addressed to Mr. Roy E. Hallberg from John Whyte, reading:

“Dear Roy,

“I am returning herewith the files covering the installation of incinerator equipment at both the Canterbury and the Oliver Cromwell apartment buildings.”

Do you recollect having received the original of that letter on or shortly after the date it bears?

A. Yes, I do.

Q. Following the receipt of that letter, together with the files enclosed, did either you or Mr.

onymy of Catherine Cosgrove Hallberg.)

f the incinerator equipment at the Oliver
rell and the Canterbury.

Yes. After we received the letter, it was just one day after that, it was on the part of the 303] that all mail was always placed for Mr. rg's attention, and he saw it and he said, that is that. We go ahead. Attend to this," Harrison.

Don't remember the exact words, but certainly
effect.

Q. You received a warning notice from the smog
authorities on or about January 13th, is that
correct? A. That is correct.

What, if anything, did you or Mr. Hallberg
r presence do after you received that warning
?

Our first move was to call Mr. Manalis of the
re and told him about it immediately.

said it was quite all right, he would call the Pollution Control Authority and inform them they were going to progress the work, progress the work as soon as possible, and that we have to worry about it, he would take care

Who was it that called Mr. Manalis, can you

(Testimony of Catherine Cosgrove Hallberg.)

The Witness: I have called him and I know Harrison called him.

Mr. Enright: I move to strike the answer [304] responsive. The question was who called on that occasion.

The Court: Well, I take the answer to be both called him.

Mr. Enright: I don't know. I guess you deduct that.

The Court: Well, strike the answer. Ask the witness to try again.

Q. (By Mr. Whyte): I am speaking now of the conversation which took place with Mr. Manalis immediately after the receipt of the warning on January 13th, who called Mr. Manalis at that time?

A. Mr. Harrison called him the first time I believe.

Q. Were you present at that conversation?

A. There were so many calls to Manalis, I don't remember if it was the first time or not.

Q. Did Mr. Harrison report to you his conversations with Mr. Manalis? A. He did.

Q. What did he say?

A. He said that Mr. Manalis would take care with the Air Pollution Control Authority. They weren't to worry, and he would take care of it.

mony of Catherine Cosgrove Hallberg.)

Probably after the legal document came. I know what you call it.

By "legal document" you mean the citation, criminal complaint that was issued about January 7th?

A. Yes.

Following the issuance of that criminal complaint or about January 27th, what did you do? I went to the Air Pollution Control Authority. There were calls to Mr. Manalis first, and he said it was nothing, he would handle it, the most it would cost \$50.00. But, nevertheless went out to Mr. Gordon Larson's office.

There has been some testimony in this record reference to the breakdown of refrigeration at Western Arms.

you tell us when you first—I mean you personally, Mrs. Hallberg,—when you first had knowledge that the refrigeration system had gotten into trouble at the Western Arms Apartment Hotel?

The afternoon of February 17th; it was on Wednesday.

Will you state what happened at that time,

I was in the building twice that day. The first time was about 4:30 in the afternoon, when I went back [306] to pick up some draperies.

I went to the young chap down in the service

(Testimony of Catherine Cosgrove Hallberg)

Q. This was the afternoon of the 17th?

A. This was the afternoon of the 17th.

Q. What, if anything, happened on the

A. On the 18th, when I got into the office Findeisen, who was in the office at that time, not Mr. Harrison, informed me that Mrs. K had called the previous evening. Am I allowed to say what she said?

Q. You can tell what Mrs. Findeisen said yes.

Mr. Enright: I object. It will be hearsay. She recite what she did. She received a phone conversation.

The Court: Let's follow Mr. Enright's suggestion.

Mr. Whyte: I beg your pardon?

The Court: Let's do what Mr. Enright suggested.

Mr. Whyte: I didn't catch his suggestion. That is the reason I inquired.

Mr. Enright: My point is the witness should not ask did she receive a telephone call. She did not say what she did, the acts. That is telling what happened, without [307] abusing the hearsay rule.

Q. (By Mr. Whyte): You received a telephone call on the 18th of February?

A. That is right.

Q. From whom?

A. Miss Findeisen.

mony of Catherine Cosgrove Hallberg.)
and overheard a telephone conversation between the California Refrigeration young chap and the year-old owner-manager of the concern, stating he didn't know what was wrong.
She had taken it upon herself to switch back to Daugherty of the Normandie Refrigeration, as she had known for a long time. He had been there that night. As a matter of fact, she mentioned she had called Mr. Richman.
and also telephone messages from California Refrigeration. By that time the die seemed to be cast I——

Enright: I move to strike the entire statement of her reporting on something that violates hearsay rule. Apparently she did nothing herself.

Witness: I phoned Mr. Hallberg immediately.

Enright: May I have the answer stricken?

Court: The motion is granted, except as to the statement "I called Mr. Hallberg immediately." That may stand. [308]

(By Mr. Whyte): You say you called Mr. Hallberg immediately. That was sometime on the morning of February 18th?

A. That was.

Do you recall about what time, Mrs. Hall-

(Testimony of Catherine Cosgrove Hallberg.)

The Court: I don't think so.

Mr. Enright: All right.

The Court: We are inquiring into the qualifications of Mr. Hallberg and those who worked with him. This question may be answered.

Mr. Enright: Very well.

The Witness: I explained to Mr. Hallberg that the California Refrigeration had quoted \$1000 repair price. They wished to flow out the tanks. They inferred they were full of—I can't remember the word now—and that the Normandie Refrigeration had been on the job, had said they had put it back in running order without this operation. In other words, I gave him all the information.

Q. (By Mr. Whyte): Do you know whether anything, Mr. Hallberg did?

A. Mr. Hallberg, through having had experience——

Mr. Enright: I move to strike "through having had experience." [309]

The Court: That portion of it will have to be stricken out. You will just have to tell us what you saw or do or heard him say.

The Witness: Mr. Hallberg decided that——

Mr. Enright: I move to strike what Mr. Hallberg decided.

The Court: You can't tell us what was in his mind.

The Witness: Well, he told me that.

Q. (By Mr. Whyte): What did he tell you?

mony of Catherine Cosgrove Hallberg.)
d to go along with the Normandie Refriger-
theory; they were there, that was it. We would
they could do as they promised to do.

Did Mr. Hallberg, to your knowledge, go
to the Western Arms and inspect the refrig-
after it had been installed?

Yes. He came in later that day, oh, after it
was installed.

Tell us about when he came in and what he

He came in, we parked—we always parked
by that thing—came in and looked at it. I
was with him, too. I met him.

I think we talked to John Daugherty's as-
sistant, and he again decided that was where he
would cast his opinion. [310] So we walked away
when the thing was completed.

Is it your testimony that Mr. Hallberg and
Mrs. Hallberg visited the Western Arms on the 18th of
February and inspected the refrigeration equip-

If you can say being there and watching a
man inspecting, yes.

Mrs. Hallberg, were you present in the court-
room when Mrs. Kennedy, the manager of the
Western Arms, testified that either on the 17th or
of February, or the 18th or 19th, she was not

(Testimony of Catherine Cosgrove Hallberg.)

Q. Was Mr. Harrison present—was Mr. Harrison employed as the bookkeeper or in any capacity with the receivership either on the 18th or the 19th of February?

A. He was not.

Q. Who was in the office at that time?

A. Miss Findeisen.

Q. You recollect about when Mr. Harrison been discharged?

A. On February 12th.

Mr. Whyte: I have no further question direct, your Honor. [311]

Cross Examination

Q. (By Mr. Enright): Mrs. Hallberg, as I understand it, you phoned to Mr. Hallberg on the 18th concerning this refrigeration?

A. That is right.

Q. In the morning?

A. That is right.

Q. Where did you phone to him?

A. I phoned to him at Mr. Byram's office. He called back very soon after that.

Q. Had you ever told Mr. Harrison or anybody else that they could reach Mr. Hallberg in Mr. Byram's office?

A. I had not.

Q. So far as you know, no one knew that Mr. Hallberg could be reached at Byram's office or the County Assessor's Office, excepting yourself, is that correct?

mony of Catherine Cosgrove Hallberg.)

and observe Mr. Hallberg make the notations
hibit B?

I did not observe him make them on many,
occasions.

But on some occasions in the evening you
e him make his entry in his diary?

Some, yes.

That would be down there at your home at
a del [312] Mar?

He hauled that thing out frequently. I have
nem many times.

And that would be on occasions when you,
tell him what had occurred during your expe-
of the day?

I saw him take it out of his pocket on other
ns, too, Mr. Enright.

Will you answer my question as to this: He
make entries shortly after or at the time you
ed to him as to what occurred during the

Well, I wouldn't say all the time, no.

But usually that is what he did?

Sometimes.

Sometimes? A. Yes.

Enright: No further questions.

Whyte: Step down, Mrs. Hallberg.

(Witness excused) [313]

FREDERICK I. RICHMAN

called as a witness under the provisions of Rule 43(b) of the Federal Rules of Civil Procedure on behalf of the Receiver, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name?

The Witness: Frederick I. Richman.

Direct Examination

Q. (By Mr. Whyte): Mr. Richman, you were formerly the trustee for the Richman Trust, is that correct? you not?

A. I was one of the trustees.

Q. Who was the other trustee, sir?

A. Lyda Tidwell.

Q. Is that your sister? A. Yes.

Q. For how long did you and your sister hold the position of trustees for the former Richman Trust?

A. From the time it was organized, November 1, 1945, [314] to take effect January 1, 1946, until the Trust was terminated sometime in March, 1954.

Q. Did you manage the Trust properties during that period, sir?

A. I was agent for the trustees, and I managed the properties.

Q. During that time you also carried on the business of the Trust?

mony of Frederick I. Richman.)

What do you mean by "very small," Mr. Enright?

Well, I got out of all court work, and it was limited to what matters I could handle, or, could be handled in my office, without requiring court appearances.

What type of matters did you handle in your office?

Oh, lease work, drawing corporations, con-

Who were among your clients?

For what period of time?

During 1945, '46, when you say the Trust was active until 1954.

Well, I couldn't give you a list of my clients, but I am going over my books and records, to see if I can find out who they were at the time. And I think, also, that this is probably a privileged matter as between attorney and client.

I am not asking for any communications that you had [315] with your clients, Mr. Richman. I am just asking you whether you did not represent more clients during that period.

Enright: To which objection is made on the ground that it calls for confidential matters. Thackery v. Superior Court, Supreme Court decision, holds that the name of a client is confidential matter.

(Testimony of Frederick I. Richman.)

Was a copy of that Order served upon you?

A. Yes, it was; copy that belonged to the
I had never been served and I was up in
believe, December 4th, and brought the po
and Judge Tolin directed that one of the
copies be served on me that day.

I had left word with you and Mr. Hallbe
the managers, to please come into my office
me, that I would take service. It was in court
served on about the 4th of December.

Q. You read over this Order, did you r
lowing its service upon you in court on o
December 4th? A. Yes.

Q. I ask whether or not you noticed the
graph on the third page of the Order com
at line 5: [316]

“It is further ordered that Plaintiff Ly
well and her attorney and the defendants an
attorneys, and all other persons and each o
be enjoined, and they are hereby restrained
disturbing possession of said Receiver or
manner molesting the said Receiver of t
property, or interfering directly or indirect
the administration of the receivership.” [3

You read over that language, did you?

A. I did.

Q. Following your reading of that la
sometime on or shortly after December 4th,

mony of Frederick I. Richman.)

I had a conversation, the first conversation—I had a conversation just at Christmastime. He told me to wish me a Merry Christmas, and I responded. The other conversation was, I believe, on the 29th of January, 1954.

Did you call Mr. Harrison on that occasion? I did.

Did you go out to see Mr. Harrison?

I called, endeavored to call Mr. Hallberg. I tried to call you, Mr. Whyte, and I couldn't.

I called Mr. Harrison. I went out and saw Mr. Harrison on January 30, 1954.

You talked to him at that time with reference to the administration of the receivership under Mr. Hallberg's guidance?

I talked with him at that time relative to the criminal complaint that was filed and the warrant issued on the Oliver Cromwell incinerator matter. Yes. Are those the only conversations which you recollect having with Mr. Harrison during the receivership of Mr. [318] Hallberg's receivership?

No, I had other conversations with Mr. Harrison after he was no longer in the employ of Mr. Hallberg.

But the only two conversations you recollect having with Mr. Harrison was in Mr. Hallberg's

(Testimony of Frederick I. Richman.)

A. I think I had a conversation with him in the early part of February. He was interested in knowing how the court proceeding came out and what was going to happen. I called him and reported to him on that. I mean, that is the criminal proceeding at the Lincoln Heights jail.

Q. You called him and reported to him regarding those proceedings?

A. It is my recollection I did, yes.

Q. Mr. Richman, it is true, is it not, that you will say, during the period of the year immediately preceding December 1, 1953, while you were operating head of the former Richman Trust, that you received compensation equivalent to ten percent of the gross receipts from those properties?

Mr. Enright: To which objection is made on the ground it is incompetent, irrelevant and immaterial because what he received as a one-half owner-trustor-trustee beneficiary [319] agent, in no manner comparable to or in any manner resembling fees to be paid to a receiver. His particular circumstances make an entirely different rule applicable.

The Court: What he received as an owner is not be material. What he received as compensation for like services to those required to be performed by the Receiver, I think, would be proper.

Now, let's have the question and see if it is sufficiently narrow.

mony of Frederick I. Richman.)

and by the trust agreement, which my recollection is ten per cent of the gross income, exclusive of capital items.

(By Mr. Whyte): During the period when you were serving as the operating head of the Richman Trust, did you have managers at the various apartment houses? A. I did.

Under your direction and control?

There were managers at all the buildings, and as agent for the trustees they were under the direction of the agent.

Did you have a bookkeeper, either in your office or at one of the apartment houses, who kept the books for the trust operations? [320]

I want to answer your question correctly. There was no bookkeeper, as such, belonging to the trust.

I had a secretary and a bookkeeper. I have always had what they call a combination help in the person of a secretary and bookkeeper. And my secretary and bookkeeper kept the books of the Richman Trust. The Richman Trust never had a bookkeeper or a payroll.

Court: Who paid the secretary?

Witness: I paid the secretary out of mine. I paid the salary, all presents, all bonuses, the Social Security, unemployment on the secretary's sal-

(Testimony of Frederick I. Richman.)

The Court: —Frederick I. Richman, than of the Richman Trust?

The Witness: That is right. There was no charge for any overhead of any kind to Richman Trust.

The Court: Were the managers of the apartment houses employees of Frederick I. Richman, or employees of Richman Trust?

The Witness: They were employees of Richman Trust.

Q. (By Mr. Whyte): What duties did your secretary in the office perform, other than those connected with the Richman Trust? [321]

A. Secretary to me. Take my dictation, typing, keep my personal books, keep my account books, and there were about four other sets of books in the office that my secretary kept, as well as keeping the Richman Trust

My secretary got out the Richman Trust papers, took off the monthly statements and typed them up for the Richman Trust, and did whatever had to be done in the office.

Q. So that when you say that you paid your secretary out of your own pocket, you were paying him, not only for the work he did in connection with the Richman Trust, but for taking your dictation, typing your letters, keeping other

mony of Frederick I. Richman.)

Richman Trust to keep a full-time book-busy or a secretary busy.

Who picked up the rents at the apartment during the time you were operating head of Richman Trust?

I generally did it. On occasions my secretary

By your secretary you are referring to Mr. Harrison?

I am referring to Mr. Harrison. I am referring to Miss Bowman, when she was my secretary, and Mr. Steiner, when he was my secretary, Mulberg, or whoever happened to be [322] my secretary at the time.

Did your wife ever assist you in connection with the management of the five apartment buildings of Mr. Richman?

My wife assisted me to a certain extent, in particular when painters, upholsterers, and carpenters were there, to pick out color schemes and decorations, and on occasions to set up the units when the work had been done.

Did she receive any compensation for that? She did not. In fact, on those days she accompanied me I bought her lunch for her and never drew anything from the Trust for it.

You are familiar, I am sure, Mr. Richman,

(Testimony of Frederick I. Richman.)

Q. During your regime as trustee you made payments on accounts of that trust deed, did you?

A. I did.

Q. When did those payments fall due, Mr. Richman?

A. 1st of the month.

Q. Did you ever make any payments on accounts of that trust deed before the 1st of the month?

A. The records would be the best evidence of that. My recollection is on a few occasions but generally they were made between the 1st and the 5th of the month. The [323] reason for that being the payroll was generally dated the last of the month and was gotten out on the 1st of the succeeding month.

As soon as the payroll was out of the way then we could proceed to date the date of the payroll for the month and it would be around somewhere from the 2nd to the 5th, generally.

Q. You recollect, do you not, Mr. Richman, that Mr. Hallberg and I came to your offices on or about December 3rd and you were kind enough to spend several hours with us, in connection with Mr. Harrison, whom I think was present, too, explaining the nature of the assets and properties, some of the problems connected with their management and you recall that conversation, do you not?

A. I do. I am not too sure of the date, but it was in that time.

ony of Frederick I. Richman.)

t deeds and original papers which you had possession pertaining to the Trust.

did.

You turned over those files, for the most December of 1953, is that not true?

Mr. Hallberg was desirous of obtaining the My recollection is that on the day you were that he [324] took out the envelopes representing the title instruments covering the properties and a receipt that day.

next day I drew up the set of the current files. And then on Saturday the 5th of December Mr. Hallberg came down and picked up the files. They were in one filing case of mine, I loaned to Mr. Hallberg, to keep them in, along with a key to it. I might add the filing has been returned, but the key has not been returned yet.

two weeks later, on a Friday, Mr. Hallberg came and wanted to know if he could pick up the files—we will call them dead files—of transactions that had been closed of Richman Trust, and to pick them up on a Saturday.

informed him that it would take some time to get the receipt. He suggested that he would send Harrison down.

(Testimony of Frederick I. Richman.)

the receipts ready by the time he got in from na del Mar, which was done.

They were worked up and he receipted f on Saturday, I believe, the 18th, or some there, of December; whenever it was a Sa He had me down working on a Saturday.

I told him I didn't particularly want to was near Christmastime and I was busy, said that he wanted the records so that he be criticized by the court and he had bett them up on Saturday. I didn't know that working for the County of Orange and that only free time at that time.

Mr. Whyte: I move that be stricken as sponsive to the question, the last sentence.

The Court: Motion granted.

The Witness: He took out the files. I t when they went out that I thought I had over everything to him, that the matter ha involved in litigation for almost two years files had been up in court and opened up, a here and there, but to the best of my know turned everything over to him.

But that if I found anything else at any the future, that I would immediately transm to you. So he loaded them in the car and away.

Q. (By Mr. Whyte): Sometime in Jan

ony of Frederick I. Richman.)

I don't want to use the word "file." The correspondence regarding the Oliver—or, the parapet Canterbury was only about four or five letters were lying on top of my desk in a stack. For my purposes, I [326] label in my mind as not pressing, awaiting future correspondence before action has to be taken.

I don't want to send that document and other documents like it back to my filing system, to be a file in a cabinet and be lost and forgotten. So they are kept on top of my desk.

Never it was, and I think it was the latter—I was awaiting a further letter from the Engineering and Safety Department. This pile stays on top of my desk and it is never touched. Whatever the date of the letter was, that was received from the Building Department, I immediately dug up other papers and clipped them together and with the letter and sent them out to Mr. Hallberg; whatever the date was.

There was only about five or six letters in the file. It was not a regular Manila file, such as other files were, as he had picked up papers and was never kept in the filing cases.

I believe you told us previously that your position was the operating head of the assets and properties constituting the former Richman

(Testimony of Frederick I. Richman.)

Q. By that do you mean that any legal services which [327] you performed for the Trust were included within the ten per cent gross receipts that you received? A. Yes.

Q. You made no further charge of any kind for your legal services, in connection with the administration of the affairs of the former Richman Trust? A. That is correct.

Mr. Whyte: No further examination at this time, your Honor. * * * * * [328]

Los Angeles, Monday, May 17, 1954, 1:30 p.m.

The Court: We will have to take one or two interruptions, which I don't think will be very long this afternoon, but we will have to do it in order to get this matter done today.

You may proceed.

Mr. Whyte: Inasmuch as Mrs. Kennedy, the former manager of the Western Arms Apartment Hotel, will not be here until 2:00 o'clock, I will proceed to put on the case with reference to the fees of the attorneys for the Receiver.

In that connection I should like to take the stand of myself, to testify briefly. My expert witness, Referee Hunt's courtroom on the third floor. I will request one of my clients to go up and get him here so that no time will be lost.

The Court: Well, if you outline what you have done, the court is always supposed to be a

you have done. If you want to enumerate that, it will suffice.

Whyte: Whatever your Honor's pleasure is, I am willing to build a record here which would be binding for all purposes, and if you would like to have the expert we can bring him down. If you do not to have him——

Court: It is entirely up to you, whether you [331] to have him or not. You might be happy in your own mind if you do.

Whyte: Very well.

Court: We will take a few minutes for this case.

(Other court matters heard.)

Court: We will return to the Tidwell case.

Whyte: I would like to call myself as a witness if I may take the stand, please.

Court: All right.

JOHN WHYTE

on behalf of the Receiver, first being duly sworn, testified as follows:

Direct Examination

Clerk: State your name, please.

Witness: John Whyte. First, I had better state for the record, that I have performed each one of these services enumerated in my original

(Testimony of John Whyte.)

That Petition has been verified by me and hereby affirm that I have performed each and of those services.

I further affirm that my partner, Richard Patrick, devoted a very few hours to this matter. The great bulk of the work has been done by me so that I will refer to myself [332] as the attorney for the Receiver.

I further affirm that I have performed each and all the services enumerated in Paragraph 3 of the "Supplemental Petition for Allowance of Fees of Attorneys for Receiver", filed herein on the day of this hearing.

Those two Petitions cover a period during which services were rendered commencing on November 30, 1953, up to and including May 10, 1954, which is the last date upon which services were performed as specified in the Supplemental Petition.

It is further my testimony that on May 11, 1954, I performed the following services, to which I devoted a total of five hours:

"Telephone call from Hallberg re evidence presented at hearing on May 12th. Figuring breakdown of hours of attorney's time for inclusion in Supplemental Petition for fees to attorney for Receiver.

"Studying Hallberg's deposition. Conference with Jefferson Mann, in preparation for his direct

mony of John Whyte.)

on for Mr. Mann, the expert witness, as to
value of the Receiver's services."

The court knows, I have been engaged in de-
fending the [333] Receiver against the objections
therein by defendant Richman to the Receiver's
Petition for fees during the course of
hearing, which has continued for, between two
and three full court days.

I wish to testify further concerning the follow-
ing matters:

Contrary to the Receiver's possible misapprehen-
sion, I was not advised of the January 13, 1954
warning notice, received with reference to
issuing from the Oliver Cromwell.

With regard to the conversation——

Enright: Just a moment. I move to strike
the witness' statement this was a warning notice.
It is, in fact, a citation from the Authority.

Witness: I will let the document speak for

Enright: Then I move to strike your words
conclusion on your part.

Court: The words "warning notice" will
be stricken.

Witness: May the record show I am refer-
ring to the notice dated January 13, 1954?

Court: Is it in evidence?

Witness: I am not sure. Do you have the

(Testimony of John Whyte.)

The Witness: Merely that it specifies what document [334] is. It is a notice dated January 1954, directed to the Oliver Cromwell Apart Hotel:

“You are hereby charged with violating Section 24242 of the Health & Safety Code of the State of California by discharging smoke in excess of that allowed from chute fed incinerator.”

Perhaps before I forget it, this would be a good time for me to offer in evidence the whole of the deposition, which has been taken in this cause.

Mr. Enright: To which objection is made on that ground the witness is here available to testify. The deposition was merely taken as an aid in discovery. He can testify.

The Court: I think under Rule 26 it is admissible, isn't it, Mr. Enright?

Mr. Enright: I suppose within the discretion of the court. But I think it is perfectly clear that this witness, being an attorney at law, should be able to testify as to what services he rendered.

The Court: Well, we will look primarily to the deposition. The Rule allows the testimony in. If it is admitted.

The Witness: With reference to the conversation had with Judge Tolin on the evening of March 7th, that being a Sunday, March 7, 1954, I can state the following:

I was present in Mr. Hallberg's home at C

mony of John Whyte.)

in regard to services rendered or materials
ed to the receivership during the month of
ry 1954, where the creditors' bills or state-
were not received until after March 1. We
oncerned as to whether or not those bills
be paid following March 1, when the Order
by this court on February 28th had pur-
to terminate the Receiver's active duties
agement as of 5:00 o'clock p.m. on Febru-
th.

Hallberg telephoned Judge Tolin in my pres-
and put the problem to him. I then came on
one.

entioned to Judge Tolin that we had this
n concerning bills covering materials fur-
or services performed during February of
where the actual statement was not received
n or after March 1.

plained that I had contacted the attorneys
e plaintiff and the defendant, and that Mr.
t was opposed to the Receiver paying those
nd that Mr. Camusi was agreeable that they
be paid by the Receiver.

ge Tolin then and there instructed me to pay
bills, that is, that the Receiver should pay
bills and those payments are evidenced by the
de which is attached to the Receiver's report

(Testimony of John Whyte.)

Oliver Cromwell and the [336] Canterbury
ment Hotels.

Mr. Enright: May I move to strike the
“inability” and may I request that the witne
tify only to those matters he knows of hi
knowledge, rather than hearsay?

The Court: Motion granted.

The Witness: I note from my time slip o
ruary 3, 1954, that I made a notation of a tele
conversation with Mr. Tow of Air Pollution
trol District re conference with City Attorne
inability of Oxyaire to perform their contr
Canterbury.

Mr. Enright: I move to strike the stat
and the notation as being hearsay. So far as
man is concerned, it all arose after the cri
citation.

The Court: May I have it read, please?

(The answer was read.)

The Court: Motion denied.

The Witness: In that connection I recall
had a telephone conversation with Mr. Mana
or about that date, during which I was advise

Mr. Enright: Just a moment. I object to
he was advised as being oral hearsay. If the
fact he spent his time in having a conver
may be a basis for compensation, that is one
but what Mr. Manalis told him is certainly he

mony of John Whyte.)

publishing the quality of conversation had been between the two. Objection overruled.

Enright: "Quality" did I hear your Honor

Court: Yes. I mean the kind and type of conversation with which he was called upon to deal as an attorney.

Enright: Very well.

Court: I am not appraising it as to good, or bad, or poor.

Witness: Mr. Manalis stated, in substance, that the particular metal used in the dampers, which were to be installed in the incinerators at the Oliver Wyllie and Canterbury, was in short supply. They did not have enough of that metal to put the incinerator equipment promptly.

That in mind, I called Mr. Tow, as I have mentioned, from the reference to my time sheet.

Mr. Tow asked me to write him a letter, he being

Mr. Tow telling me he was concerned about the possibility that Oxyaire might not be able to get the incinerator equipment installed properly.

He then wrote a letter to Mr. Tow dated February 1954, if counsel would like to see it.

Enright: I have seen it. Go ahead.

(Testimony of John Whyte.)

“Air Pollution Control District, 5201 South
Pedro, Vernon, California

“Attention Mr. Tow

“Gentlemen:

“Following my telephone conversation with
Mr. Tow yesterday afternoon regarding the ins-
tation of Oxyaire, by Oxyaire of smog control e-
ment in incinerators located at the Oliver C-
well Apartment Hotel, 418 South Normandie
Angeles, and the Canterbury Apartment I
1746 Cherokee, Hollywood, I discussed the m-
over the telephone with Mr. Manalis, one of th-
ficers of the Oxyaire.

“Mr. Manalis informed me that his company
not on hand sufficient material to install suc-
cinerator equipment, which is in somewhat
supply throughout the country. Mr. Manalis
ther stated that his company would commence
work of installment at the Oliver Cromwe-
Monday morning, February 8th, and the Ca-
bury a few days later. He estimated it would
two to three weeks to complete the installation.

“I trust this information will be helpful to

“Yours truly,

“John Whyte, Attorney for Roy E.
berg, Receiver for Assets of the fo

mony of John Whyte.)

Now on hand sufficient material of this heat-treated type metal to make the installation, requiring a change in his statement to me, which was made within the previous 24 hours, I believe.

Now, in reference to the reason why the Receiver's report was not filed within the normal time—it was not filed as soon as it was contemplated, referring to my time slip for January 29, 1954, states: "I had a telephone conversation with Judge Tolin after the Receiver's first report. The judge decided to defer Rule 18(b)——"

Now, the local rules, Southern District of California,

—and postpone filing report until March 20, 1954, so that it might cover a full three-month period.

Now, regarding to the date upon which Mr. Harrison was discharged from the Receiver's employ, this testimony has reference to the statement made by Mrs. Kennedy that she talked to Mr. Harrison on either the 17th and 18th or the 18th and 19th of February, 1954, as informed by him that Mr. Hallberg could not be found.

Now, I believe Mrs. Kennedy stated that was a call to her office at the Oliver Cromwell, where she reached Mr. Harrison, so she said.

Now, the time slip for February 12, 1954, records the following notation: [340]

(Testimony of John Whyte.)

Cross Examination

Q. (By Mr. Enright): Now, with reference to Mrs. Kennedy, she did testify she called the office of Mr. Hallberg at the Oliver Cromwell, did she? A. Yes, I so understood her.

Q. On cross examination you asked the last question, did she talk to Mr. Harrison? She answered she thought she did, is that right?

A. She didn't testify she thought she did, she stated positively she did.

Q. The man at the office. Will you refer to the time sheets? A. (Witness complies.)

Q. You have them in front of you?

A. I do.

Q. You are seeking compensation for hours expended approximately 93 hours, that is, the hours in support of your Petition, original Petition?

A. The time set forth in the original Petition is approximately 91 hours. The time set forth in the Supplemental Petition, with reference to the services performed in connection [341] with the administration of the business and affairs of the former Richman Trust, is 8.7 hours.

Q. Now, as I understand it——

A. That excludes the services I have rendered in connection with defending the Receiver and the attorneys against the objections filed by defendant Richman.

Q. As I understand your position, it is this:

nony of John Whyte.)

92 hours and you desire to be paid \$3,000.00, right?

I have specified, I believe, in my Petition, my Petition specified a figure of \$3,000.00 for ordinary legal services heretofore necessarily rendered from and after November 30, 1953, to including March 17, 1954, together with such sum as the court may in its discretion determine to be a reasonable attorney's fee for the ordinary legal services performed during that period.

Will you please answer yes or no? You want \$3,000.00 for your ordinary services, is that correct?

That is correct.

And you want an additional sum to be fixed by the court for extraordinary services?

If we are speaking of the period between November 30, 1953, and March 17, 1954, I do. I consider the service rendered in connection with the hearing of the criminal [342] citation in re smog inspection is an extraordinary service.

And for the ordinary services you would desire to be paid in excess of \$30.00 an hour for time expended, is that correct?

I think it figures out to just about \$30.00 an hour.

That is, 90 into \$3,000.00, it is more than \$30.00 an hour.

(Testimony of John Whyte.)

A. That is true.

Q. You expended six hours on December 1st that correct?

A. Correct.

Q. That was before your appointment?

A. Yes. I was not formally appointed until 2nd.

Q. And on December 1st you feel you were rendering legal services when you went with the Receiver to the Union Bank and visited the apartment houses?

A. I do. My presence at the Union Bank—where they are asking for my belief and my opinion—my presence at the Union Bank was necessitated because we had a legal matter of transferring the old account in Mr. Richman's name to a new account in Mr. Hallberg's name as Receiver. [343]

I, in fact, wrote out for the bank officials exactly the language which I wanted on that account.

In so far as the visits to the apartment house managers is concerned, Mr. Hallberg requested me to go with him, meet them and explain the change in the legal situation which had taken place as a result of his appointment as Receiver.

Q. He hadn't been yet appointed, had he? If he had been no order appointing him yet?

A. The order appointing Mr. Hallberg Receiver was filed herein on November 30th.

Q. That is the decision of the court to appoint him, isn't that right, Mr. Whyte? Could you answer

mony of John Whyte.)

Yes.

My office file contains the following docu-

caption, "Order Appointing Receiver," with
Clark's filing stamp November 30, 1953, on it.

This is the Order whereby Mr. Hallberg is ap-
pointed Receiver of all the real and personal prop-
erty constituting the former Richman Trust.

Had he qualified at that time?

I beg your pardon?

Had he qualified and filed his oath on De-
cember 1st?

No, I do not think his bond was filed until
the 1st of December. [344]

So he wasn't qualified to act until his bond
was filed and his oath had been filed, isn't that
right, Mr. Whyte? You knew that, didn't you?

I can't answer that. That is a legal conclu-
sion as to whether he was qualified to act.

Before he filed his oath you were his attor-
ney and participated in his filing his oath and filing
the bond, didn't you?

Yes, I participated in filing his bond.

That was on December 2nd, wasn't it?

Yes.

Before you had done that, you went to the

(Testimony of John Whyte.)

A. In only one instance was any money turned over to us.

The Court: That wasn't the question. The question was whether you went and advised manager to turn over money?

The Witness: I believe we did.

The Court: On what authority, since he had not qualified as Receiver?

The Witness: As I view it at this time, I think the authority was probably erroneous, your Honor.

Q. (By Mr. Enright): You want to be paid six hours at \$30.00 an hour for that erroneous advice, don't you? [345]

A. If that six hours is erroneous advice, I don't care to bear in mind some of that six hours was for work performed at the Union Bank, which I have just mentioned, then the court is at liberty to disregard it.

Q. Now, just what authority did you have to go to the Union Bank or Mr. Hallberg on December 1st and tell the Union Bank——

The Court: He has answered that he had no authority to have any.

Mr. Enright: Very well, then.

Q. (By Mr. Enright): So the same would be true about your services at Union Bank that day?

A. May I explain my answer, please? We were faced with the practical situation that there was

mony of John Whyte.)

e of the bank account immediately, in order
ose checks could be handled.

t that that account matter should be taken
at once, and I would do it again if I were
same position.

Court: Wouldn't it be better to rush up here
e bond for the Receiver and get him quali-
st?

Witness: We had a little difficulty getting
nd, your Honor. There were several conver-
with the—if you will permit me to get my
ps——

(By Mr. Enright): Please read your time
December 2nd about getting qualified. [346]
I will be glad to. The time slip for Decem-
—this is Mr. FitzPatrick's time slip—"Hall-
me in at 9:00 a.m. re his bond as Receiver.
honed Hecht at F & D. He said that he had
sked last night by Richman to put up a
deas bond on appeal. That if a writ of
deas were issued we might not be able to
the premium on our bonds out of the assets
receivership.

therefore wanted to wait until the issuance
bond, to see if a supersedeas were issued. I
d this to Mr. Hallberg. We agreed to wait
ur.

(Testimony of John Whyte.)

away and he would see that the premium was out of the receivership assets.

"I phoned Hecht and told him that if he was unable to issue the bond we would get it elsewhere. He then asked if it was O.K. for him to telephoned Judge Tolin and I said yes.

"He called back in a few minutes and said he would issue the bond. I gave him the title of the court and cause, and Hallberg went over to the office to get the bond. Whyte came in and reported to him what had happened."

Q. That is the services rendered that day, is that correct, by your associate, Mr. FitzPatrick?

A. Yes. [347]

Q. Now, concerning your extraordinary fee that you desire to be paid, will you refer to your December 27th time sheet? A. Gladly.

Q. You spent .3 of an hour on that day, did you not? A. I did.

Q. And the .3 of an hour was expended on the the smog control contracts that later resulted in the criminal citation, isn't that right?

A. My sheet shows, "Examination of files for reference to installation of incinerator equipment for Canterbury and Oliver Cromwell and liaison of Receiver to carry out contracts for such installation."

Q. You advised Mr. Hallberg that he should carry out the contract as a result of your letter?

nony of John Whyte.)

and binding, that they should be carried out. The balance of the purchase price, which I was 90 per cent, was not to be paid until the installation had been performed and worked by the Air Pollution Control District.

Then you wrote a letter of transmittal on December 31st, transmitting the smog control file to Mr. Hallberg? That is all there in the file, isn't it?

My office copy is dated December 30, 1953, and [348] to Mr. Roy E. Hallberg at the Cromwell Apartment Hotel.

Roy:

"In returning herewith the files covering the citation of incinerator equipment at both the Cromwell and the Oliver Cromwell apartment buildings."

The next event, so far as your rendering of legal services, was on January 27, 1954, you received a telephone call from Mr. Harrison or someone that the citation, the criminal complaint had been filed January 27th?

I believe that is correct, Mr. Enright.

That was .2 of an hour on that criminal matter and other matters on that date, isn't that correct?

Yes. My time slips for January 27th show .2 of an hour. "Telephone call from Harrison re

(Testimony of John Whyte.)

Q. It wasn't until January 29th that you phoned Mr. Richman that he was named as a defendant in that criminal complaint, was it?

A. I don't believe I knew on the 27th that Richman was a defendant in the criminal complaint.

Q. But you did phone him on the 29th?

A. I phoned his office and left word at some time between 4:30 and 5:00 o'clock in the afternoon. [349]

Q. On February 1st you appeared in criminal court and expended 2.6 hours in handling that appearance, plus other matters, is that right?

A. I expended 2.6 hours on February 1st on a number of matters.

Q. Among the number of matters you attended to was this citation of this return of the criminal complaint?

A. Yes. I made an appearance in Department 30-A, Los Angeles Municipal Court, in re arrest of the City of Los Angeles vs. Richman and Connell.

Q. The total time expended was 2.6 hours?

A. For that and a number of other matters, which, I suppose, I had better read into the record.

Q. All right. Go ahead and read from the exhibit sheet for that day.

A. The appearance in Department 30-A I have already noted. The matter was set over until January 22nd at 9:30 a.m.

mony of John Whyte.)

that Oxyaire gets to work immediately on
tion of smog control equipment.

ephone from Mrs. Hallberg re result of
hearing. Dictating draft of first report of
er and Petition for Instructions and revising
ne." [350]

Court: Before we proceed further, I have
that Mr. Laugharn, who has been sitting
or some 15 minutes, has come in from an-
court to which he wishes to return, and he is
ess here.

it be agreeable with whoever wishes to call
call him now? We can suspend Mr. Whyte's
e examination until after that is done.

Enright: So far as I am concerned, yes, sir.

Witness: Thank you.

(Witness temporarily excused.)

HUBERT F. LAUGHARN

on behalf of the Receiver, first being duly
testified as follows:

Clerk: State your full name, please?

Witness: Hubert F. Laugharn.

Direct Examination

(By Mr. Whyte): Where do you reside, Mr.
arn?

620 South Irving Boulevard, Los Angeles

(Testimony of Hubert F. Laugharn.)

Q. What is the name of your firm?

A. Craig, Weller & Laugharn.

Q. What is your office address?

Mr. Enright: I offer the stipulation that Laugharn [351] has practiced law in this community for a great period of time. He specializes, I think, in bankruptcy, if that will be of any use, and the general practice of law.

Mr. Whyte: I appreciate your offer to stipulate to the qualifications of the witness, but I would ask a few questions, if I may.

Q. (By Mr. Whyte): Where was your office located? A. Where is it now located?

Q. Yes.

A. 817, 111 West Seventh Street Building in Los Angeles.

Q. In what year were you admitted to the bar in California? A. 1923.

Q. Have you practiced law continuously since that date? A. No, I haven't.

Q. For what period of time did you have no work in this area?

A. From 1941 to 1948 I was Referee in bankruptcy.

Q. Were you appointed Referee in bankruptcy by the judges of this United States District Court for the Southern District of California?

A. Yes, I was.

Q. In what specialty have you engaged in

ony of Hubert F. Laugharn.)

t, [352] bankruptcy, liquidation, out of court
ent of creditor and debtor problems. I think
obably would describe it.

Court: Mr. Laugharn, Mr. Enright is hav-
able hearing you.

Witness: I am sorry.

Court: This is a much larger courtroom
e one you have upstairs. It is kind of hard

Witness: I am sorry. I would say it was a
what you would call a firm that has a gen-
actice, probate, commercial law. I don't know
yone in the firm has ever handled a crim-
tter, but I would say general otherwise.

By Mr. Whyte): Have you ever been ap-
a Receiver in any court action?

Yes, I have been Receiver in quite a few
atters, trustee.

Have you been appointed a Receiver in the
District Court?

Yes, on quite a few occasions.

Also in the state courts?

Yes, on a number of occasions.

Have you acted as an attorney for a Re-
appointed by either United States District
r one of the state courts in California?

Yes, upon quite a number of occasions. [353]

direct your attention to the petition "Peti-

(Testimony of Hubert F. Laugharn.)

A. Yes, I have.

Q. I further call your attention to the "Submental Petition for Allowance of Fees to Attorney for Receiver" filed herein on or about the first of this hearing, and ask whether you have examined that document? A. Yes, I have.

Q. I direct your attention to a copy of the deposition of John Whyte filed herein, and ask whether or not you have read that deposition?

A. Yes, I have.

Q. I refer you to documents entitled——

A. Just a minute. Could I just——

Q. Of course, Mr. Laugharn.

A. Yes. I knew the deposition I read a number of corrections in it and I notice some of them here in pen and ink.

Q. I direct your attention to a document filed herein on November 30, 1953, entitled "Order Appointing Receiver", and ask whether or not you could recollect having read that document?

A. Yes, I read this. [354]

Q. I call your attention to a document filed herein on December 2, 1953, entitled "Petition for Authority to Employ Counsel and Attorney" and ask whether or not you have read that document?

A. Yes, I have.

Q. I direct your attention to a document filed herein on December 18, 1953, entitled "Petition for Authority to Pay Christmas Bonuses" and ask whether or not you have read that document?

mony of Hubert F. Laugharn.)

I next direct your attention to a document
 "Petition for Authority to Renovate In-
 cluded Among Assets of Former Rich-
 man Trust" filed herein—I am not certain of the
 and ask whether or not you have read that
 document? A. Yes, I have.

Next I call your attention to a document en-
 titled "Objections and Answer to Report and Peti-
 tion of Receiver and his Attorney for Fees" filed
 on or about April 7, 1954, and ask whether
 you have read that document?

Yes, I have.

Mr. Laugharn, please assume the following

Whyte, the attorney for the Receiver, has
 been engaged in the active practice of the law in
 Los Angeles, California, for a period of from 12
 years; [355]

For 10 years he was associated with the office
 of Selveny & Myers, one of the leading firms of
 attorneys in this city;

On or about December 1, 1953, he was employed
 as attorney for the Receiver herein and has con-
 tinued at all times to represent the Receiver;

The Receiver was removed from his active du-
 ty in the management of the business and affairs of
 the former Richman Trust on February 28, 1954;

(Testimony of Hubert F. Laugharn.)

formed certain necessary services after February 28, 1954, in connection with the administration of the business and affairs of the former Richman Trust;

Assuming further that Mr. Whyte performed or substantially all of the services specified in the Petition and Supplemental Petition for Allowance of Fees for Attorney to Receiver, exclusive of services necessarily rendered by him in defending the Receiver and his attorneys against objections by defendant Richman to the Report and Petition for Fees of the Receiver and his Attorneys, said services were performed commencing about December 1, 1953, to and including March 1954;

The time devoted by Mr. Whyte to the rendering of said services, excluding services rendered in defending the [356] Receiver and his attorneys against the objections raised by the defendant Richman to the Report and Petition for Fees of the Receiver and his attorneys, has been approximately 100 hours;

The assets of the former Richman Trust, which has been administered by the Receiver, have a market value of approximately One Million One Hundred Thousand Dollars;

On the basis of these facts, what is your opinion as to the reasonable value of such services?

A. Well, in my mind I have divided the

mony of Hubert F. Laugharn.)

his administration and up and through the
ation of his Report and the presentation
in securing the discharge of the Receiver
normal type of case. The period involved
proximately three months; a few days prob-
ort of that.

idering the size of the problem, the size of
e, the extent of the assets to be administered,
ormal problems that were encountered, it
seem to me that a compensation of \$1,000.00
h would not be excessive; considering all of
lements.

the rest of the problem, including the ob-
s to the Receiver's Report and the contended
ges——

May I interrupt, Mr. Laugharn, to ask
r I [357] might put a further hypothetical
n to you on those services, and then let you
that just as you see fit. A. Yes.

Please assume the following further facts:
he Receiver was relieved of his active du-
management of the assets of the former
an Trust on February 28, 1954, the defend-
ein, Frederick I. Richman, filed written ob-
s on or about April 7, 1954, to the Report
tition of the Receiver and his attorneys for

objections contained charges that the Re-

(Testimony of Hubert F. Laugharn.)

It is further claimed in said objections that the reason of improper performance of his duties by the Receiver should be surcharged in an amount of approximately Eight Thousand Dollars;

John Whyte, the attorney for the Receiver, has undertaken the latter's defense against each and all the charges against the Receiver specified in said objections.

In that connection Mr. Whyte has devoted between 16 and 17 hours prior to the commencement of this hearing to the defense of the Receiver against the charges made against him, as set forth in the objections filed herein by defendant's counsel; man;

Such hearing has continued for from two to three full court days; [358]

On the basis of these facts, do you have an opinion as to the reasonable value of Mr. Whyte's services in defending the Receiver against the aforesaid objections filed to the Receiver's Report and Petition for a Fee herein?

A. Well, assuming the elements that you have given, some of which I am not familiar with in preparation, but assuming that amount of time was necessary and assuming the disposition of the problem did require three court days before the court, it would seem to me that—and assuming a fair degree of success, although I don't know

mony of Hubert F. Laugharn.)

amount of from \$350.00 to possibly \$550.00
0.00.

Whyte: You may cross examine.

Cross Examination

(By Mr. Enright): Mr. Laugharn, I would
find out how you arrived at this \$350.00 to

A. Well,—

May I pursue my question?

How I arrived at it?

May I pursue my question a little more?

I see.

So I can point out my difficulty.

Excuse me. [359]

As I recollect your answer, you said that
ere about three days involved on the hearing
secondly, I assume you took into considera-
e statement by Mr. Whyte, in his question,
was surcharges of \$8,000.00. Is that right so

I took into consideration all of the elements
requested me to take into consideration.

And then you ascertained approximately
ays and arrived at the conclusion of \$350.00
.00, is that it?

Yes, that was my general conclusion.

So that would be at the rate, for three days
0.00 a little over a hundred?

(Testimony of Hubert F. Laugharn.)

three days. Now, the thousand dollars a month take it you fix that based upon the fact the \$1,200,000.00 worth of assets?

A. That is one of the elements that I have in my mind.

Mr. Enright: I have no further questions.

Mr. Whyte: No further redirect.

The Witness: I know both of the gentlemen involved in this litigation, if the court please. I was asked to testify and felt it was my duty.

The Court: You don't need to explain. [36]

Mr. Whyte: May I ask one more question?

The Witness: Yes, sir.

Redirect Examination

Q. (By Mr. Whyte): Did I understand your answer to be that on the basis of three full days devoted to this hearing, that you felt that the thing from \$350.00 to \$550.00 was adequate compensation?

A. That is my opinion, yes, sir.

Q. What additional compensation, if any, do you think should be awarded for time of approximately 16 to 17 hours devoted prior to the hearing and preparation of the case in defending the Replevin against those objections?

A. I included that period of preparation in my estimate.

Mr. Whyte: Thank you, sir.

ony of Hubert F. Laugharn.)

Witness: Yes, that was my theory.

Enright: 28 hours. That is all.

Witness excused.) [361]

JOHN WHYTE

is a witness on behalf of the Receiver, having previously duly sworn, resumed the stand testified further as follows:

Cross Examination—(Continued)

By Mr. Enright): Now, Mr. Whyte, you advise Mr. Hallberg of the possibility of being criminal citation issued in the event log contract was not performed?

No, I don't believe that I did.

I got the impression that the sole reason for the report was because of an order made court on January 29th, according to your 29th notes, isn't that right?

I didn't mean to convey the impression that sole reason.

As a matter of fact, you spent 1.1 hours on 19th counseling with Mr. Harrison or ly in an effort to prepare, commence to the report, in accordance with the court's

What was that date again, Mr. Enright?

January 19th.

(Testimony of Maude Kennedy.)

Western Arms, Report from 10-30-1953 to 1953'', and I will ask you whether you can identify that document?

A. This is the monthly report.

Q. Monthly report of what, Mrs. Kennedy?

A. Of the rental.

Q. Are those reports kept in the regular files of business at the Western Arms Apartment?

A. They are.

Q. Is that in your handwriting, Mrs. Kennedy?

A. This is.

Q. Those reports are made up at or about the same time as the transactions reflected thereon?

A. In this report, it is made at the end of each month off the ledger.

Q. In your capacity as the manager of Western Arms, you kept these reports in your custody there at the [361-D] apartment?

A. I kept a copy of these. These were not a duplicate.

Mr. Whyte: I am going to offer this first set of white sheets, all of them being for the period of 10-30-53 to 11-30-53, in evidence as Receiver's Exhibit next in order.

The Court: Received.

The Clerk: Receiver's Exhibit 1.

(The documents referred to were marked as Receiver's Exhibit 1 and were received in evidence.)

TENANT'S NAME	Acct. No.	Remit. Rate	From	To and Incl	Rent	Miscellaneous	Total	Post Due	Rent Schedule	Cash on Hand
Darling, John	101	90.00	11-8	12-8	90.00	✓	✓	✓	✓	Cash Received
Morgan, John	102	85.00	11-1	11-2	40.00	✓	✓	✓	✓	Cash Received
Morgan, John	103	60.00	11-1	12-1	60.00	✓	✓	✓	✓	Cash Received
Muller, John	104	30.00	11-16	11-17	30.00	✓	✓	✓	✓	Cash Received
Muller, John	105	55.00	11-3	12-3	55.00	✓	✓	✓	✓	Cash Received
Muller, John	106	55.00	11-1	12-1	55.00	✓	✓	✓	✓	Cash Received
Muller, John	107	65.00	11-5	12-5	65.00	✓	✓	✓	✓	Cash Received
Muller, John	108	65.00	11-1	12-1	65.00	✓	✓	✓	✓	Cash Received
Muller, John	110	20.00	11-1	12-1	20.00	✓	✓	✓	✓	Cash Received
Muller, John	112	40.00	11-1	12-1	40.00	✓	✓	✓	✓	Cash Received
Muller, John	114	67.00	11-12	12-12	67.00	✓	✓	✓	✓	Cash Received
Muller, John	115	60.00	11-20	11-28	16.00	✓	✓	✓	✓	Cash Received
Muller, John	116	65.00	11-9	12-9	65.00	✓	✓	✓	✓	Cash Received
Muller, John	117	80.00	11-28	12-28	36.00	✓	✓	✓	✓	Cash Received
Muller, John	118	70.00	11-1	12-1	70.00	✓	✓	✓	✓	Cash Received
Muller, John	119	90.00	11-17	-	-	✓	✓	✓	✓	Cash Received
Muller, John	119	30.00	11-28	12-5	30.00	✓	✓	✓	✓	Cash Received
Muller, John	120	67.00	11-17	12-17	67.00	✓	✓	✓	✓	Cash Received
Muller, John	201	90.00	11-1	12-1	90.00	✓	✓	✓	✓	Cash Received
Muller, John	202	85.00	11-1	12-1	85.00	✓	✓	✓	✓	Cash Received
Muller, John	203	60.00	11-28	12-28	60.00	✓	✓	✓	✓	Cash Received
Muller, John	204	22.00	11-14	11-21	22.00	✓	✓	✓	✓	Cash Received
Muller, John	204	60.00	11-1	12-1	60.00	✓	✓	✓	✓	Cash Received
Muller, John	205	55.00	11-28	12-28	55.00	✓	✓	✓	✓	Cash Received
Muller, John	206	55.00	11-28	12-28	55.00	✓	✓	✓	✓	Cash Received
TOTALS										

of Requisition for Supplies

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TENANT'S NAME	Apt. No.	RENTAL PERIOD		CASH RECEIVED			Amount Rent Due	Vacant Rent Schedule	CASH REPORT	
		From	To and Incl	Rent	Miscellaneous	Total			Cash on Hand	
Burgess	207	6-5	11-1	12-1	✓	✓	✓	✓	Cash Received	\$
Burgess	208	6-5	11-5	12-5	✓	✓	✓	✓	Cash	\$
Arthurston	209	6-5	11-23	12-23	✓	✓	✓	✓	Total	\$
Winger	210	6-5	11-13	12-13	✓	✓	✓	✓	PETTY CASH EXPENDITURES	
Burke	211	6-5	11-1	12-1	✓	✓	✓	✓		
Mink	212	6-5	11-25	12-25	✓	✓	✓	✓	Item	Amount
Schoderminger	214	6-5	11-1	12-1	✓	✓	✓	✓		
Noble	215	6-5	11-14	12-14	✓	✓	✓	✓		
Anderson	216	6-5	11-24	12-24	✓	✓	✓	✓		
Anderson	216	6-5	11-24	12-24	✓	✓	✓	✓		
Barber	217	6-5	11-1	12-1	✓	✓	✓	✓		
Hempers	218	6-5	11-1	12-1	✓	✓	✓	✓		
Hankins	219	6-5	11-16	12-16	✓	✓	✓	✓		
Hanna	220	6-5	11-9	12-9	✓	✓	✓	✓		
Tabor	301	6-5	11-1	12-1	✓	✓	✓	✓		
Carman	302	6-5	11-16	12-16	✓	✓	✓	✓		
Wood	303	6-5	11-6	12-6	✓	✓	✓	✓		
Coyne	304	6-5	11-4	12-4	✓	✓	✓	✓		
Thomson	304	6-5	11-17	12-1	✓	✓	✓	✓		
Burke	304	6-5	11-17	12-17	✓	✓	✓	✓		
Hankins	305	6-5	11-4	12-4	✓	✓	✓	✓		
Alphon	305	6-5	11-1	12-1	✓	✓	✓	✓		
Hannert	308	6-5	11-1	12-1	✓	✓	✓	✓		
Chenault	309	6-5	11-1	12-1	✓	✓	✓	✓		
TOTALS									Total Petty Cash Expenditures	\$
									Cash Deposited	\$
									Balance on Hand	\$

Receiver's Exhibit No. 1—(Continued)

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TENANT'S NAME	Acct No	Rental Rate	RENTAL PERIOD		From	To and Incl	Rent	CASH RECEIVED		Total	Amount Paid Due	Vacant Rent Schedule	Cash on Hand	Cash Received	Total	PETTY CASH EXPENDITURES		Total Petty Cash Expenditures	Cash Deposited Herewith	Balance on Hand
									Miscellaneous							Item	Amount			
Boulevard	310	6.50	11-28	12-28			6.50	✓	100.00	11/20										
Daniel	311	6.00	11-1	12-6			6.00	✓												
Williamson	312	6.50	11-1	12-1			6.50	✓												
Magnell	314	6.50	11-1	12-1			6.50	✓												
Adornano	315	6.00	11-1	12-1			6.00	✓												
Bucka	316	6.50	11-1	12-1			6.50	✓												
Burch	317	8.00	11-1	12-1			8.00	✓												
Guruch	317	8.00	11-1	12-1			8.00	✓												
Edmond	318	6.00	11-1	12-1			6.00	✓												
Carby	319	9.00	11-1	12-1			9.00	✓												
Brayford	320	6.75	11-22	12-22			6.75	✓												
Neft	401	9.00	11-1	12-1			9.00	✓												
Goldens	402	8.50	11-7	12-7			8.50	✓												
Lehner	403	6.50	11-9	12-9			6.50	✓												
	404							✓												
Colbar	405	6.00	11-25	12-25			6.00	✓												
Warrod	406	6.00	11-1	12-1			6.00	✓												
Muir	407	6.50	11-14	12-14			6.50	✓												
Wood	408	6.50	11-1	12-1			6.50	✓												
Wood	409	6.00	11-12	12-12			6.00	✓												
Handerson	410	6.50	11-15	12-15			6.50	✓												
Wolcott	411	6.50	11-15	12-15			6.50	✓	140.00	11-11										
Gentlemen	412	6.50	11-1	12-1			6.50	✓												
Martinez	414	15.00	11-1	12-1			15.00	✓												
Smith	414	22.50	11-21	12-1			22.50	✓												
TOTALS																				

Receiver's Exhibit No. 1—(Continued)

Signed by

and Requisition for Supplies

ony of Maude Kennedy.)

By Mr. Whyte): Directing your attention
iver's Exhibit 1, I am going to put some
s to you with regard to the number of va-
at the Western Arms Apartment Hotel as
mber 30, 1953.

calling your attention to Room 102, Apart-
o. 102, are you able to state from this report
or not that apartment was vacant as of
e of November 1953?

vacant when?

s of November 30, 1953.

Well, I wouldn't know without looking at my

Well, there is a column on this report headed
Period"? A. That is right.

and underneath it is a column "From" and
l [361-E] column "To and incl."

hat is right.

n that rental period column for Apartment
"From" is November 1, the "To and incl."
mber 2.

does that signify, Mrs. Kennedy?

his is right here, this is when it was rented
ing).

t was rented on November 1st?

hat is right.

What happened on November 2nd?

(Testimony of Maude Kennedy.)

in order this series of sheets showing the :
from November 30, 1953, to December 31, 195

The Court: Admitted. [361-H]

The Clerk: Receiver's Exhibit 2.

(The documents referred to were m
Receiver's Exhibit 2 and were received i
dence.)

TENANT'S NAME	Ap't No	RENTAL PERIOD		CASH RECEIVED			Amount Paid Due	Vacant Rent Schedule	CASH REPORT	
		Rental Rate	From	To and Incl	Rent	Miscellaneous	Total		Cash on Hand	
101	101	90.00	12-8	1-8	90.00			\$	Cash Received	\$
102	102	85.00	12-1	1-1	85.00	10.00	95.00		Total	\$
103	103	60.00	12-1	1-1	60.00				Petty Cash Expenditures	
104	104	80.00	12-23	1-6	40.00	3.00	43.00		Item	Amount
105	105	55.00	12-3	1-3	55.00					
106	106	55.00	12-1	1-1	55.00					
107	107	65.00	12-5	1-5	65.00					
108	108	65.00	12-1	1-1	65.00					
110	110	20.00	12-1	1-1	20.00					
112	112	40.00	12-1	1-1	40.00					
114	114	67.00	12-21	1-21	67.00					
115	115	65.00	12-9	1-6	60.00	2.00	62.00			
116	116	65.00	12-9	1-9	65.00					
117	117	80.00	12-28	1-28	80.00					
118	118	70.00	12-1	1-1	70.00					
119	119	90.00	12-5	12-7	9.00					
119	119	90.00	12-16	1-16	90.00					
120	120	67.00	12-19	1-19	67.00					
201	201	90.00	12-1	1-1	90.00					
202	202	85.00	12-1	1-1	85.00					
203	203	60.00	12-23	1-23	60.00					
204	204	85.00	12-12	12-13	4.00					
205	205	60.00	12-1	1-1	60.00					
206	206	55.00	12-28	1-28	55.00					
TOTALS									Total Petty Cash Expenditures	\$
									Cash Deposited Herewith	\$
									Balance on Hand	\$

igned by

DATE	TENANT'S NAME	No.	Rate	From	To and Incl	Rent	Miscellaneous	Total	Part Due	Rent Schedule	Cash on Hand	\$
2	Wagner	308	\$65.00	12-28	1-28	\$65.00	5.00	89.99			Cash Received	\$
	Weinhardt	309	60.00	12-1	1-1	60.00	✓	212.00			Total	\$
	Werner	310	65.00	12-28	1-28	65.00	✓				PETTY CASH EXPENDITURES	\$
	Werner	311	60.00	12-6	1-6	60.00	✓				Item	Amount
	Williamson	312	65.00	12-1	1-1	65.00	✓					
	Wright	314	65.00	12-1	1-1	65.00	✓					
	Wright	315	60.00	12-26	12-27	3.00	✓					
3	Wright	315	60.00	12-30	1-30	60.00	✓	5.00			16.00	
	Wright	316	65.00	12-1	1-1	65.00	✓					
	Wright	318	60.00	12-13	1-13	60.00	✓					
	Wright	319	90.00	12-1	1-1	90.00	✓					
	Wright	320	67.50	12-23	1-23	67.50	✓					
	Wright	317	80.00	12-19	1-19	80.00	✓					
	Wright	401	90.00	12-1	1-1	90.00	✓					
	Wright	402	85.00	12-7	1-7	85.00	✓					
	Wright	403	65.00	12-9	1-9	65.00	✓					
31	Wright	404										
	Wright	405	60.00	11-23	12-23	60.00	✓					
	Wright	405	60.00	12-23	1-23	60.00	✓					
	Wright	406	60.00	12-1	1-1	60.00	✓					
	Wright	406	60.00	1-1	2-1	60.00	✓					
	Wright	407	65.00	12-10	1-10	65.00	✓					
	Wright	408	65.00	12-1	1-1	65.00	✓					
	Wright	409	60.00	12-12	1-12	60.00	✓					
	Wright	410	65.00	12-13	1-13	65.00	✓					
6	TOTALS		\$			146.00	510.00	\$	\$	\$	Balance on Hand	\$

Total Petty Cash Expenditures
Cash Deposited Hereinwith

Signed by

ony of Maude Kennedy.)

By Mr. Whyte): Now, directing your attention to Receiver's Exhibit 2, I am going to put questions to you with reference to the number of vacant apartments at the Western Arms as of the end of December 1953.

I call your attention to Apartment 204, under the heading "Rental Period", from "To and incl." 12-13,—

Rented one night for \$4.00.

During the month of December?

That is right.

Apartment 304, it shows in the "Rental Period" column, "From" 12-1 "To and incl." 12-15—

To 12-15.

Excuse me. Does that correctly delineate the period during the month of December when that apartment was rented?

A. That is right.

I will ask you to examine this sheet for December and see if you can tell me whether any apartments during that month were vacant at the end of the month.

As of the end of December?

That is right.

Apartment 204 was vacant. [361-I]

May I look at that with you, please?

Yes.

Apartment 204, yes.

Apartment 204 was rented for two weeks.

DATE	TENANT'S NAME	Acct. No.	RENTAL PERIOD		Rent	CASH RECEIVED		Amount Paid Due	Vacant Rent Schedule	CASH REPORT	
			From	To and Incl		Miscellaneous	Total			Cash on Hand	\$
	Apartment	101	1/8	2/8	\$90.00		\$	\$		Cash Received	\$
	Heckley	102	1/1	2/1	\$50.00					Total	\$
	Yard	103	1/1	2/1	\$50.00					PETTY CASH EXPENDITURES	\$
	Hoffmann	104	1/6	2/3	\$20.00						
	11th	105	1/3	2/3	\$55.00	5.00	T.Y.			Item	Amount
	Northmann	106	1/1	2/1	\$55.00						
	Moller	107	1/5	2/6	\$50.00						
	Marbore	108	1/1	2/1	\$50.00						
	Gyrell	110	1/1	2/1	\$20.00						
	Gymmedy	112	1/1	2/1	\$40.00						
	Perkins	114	1/21	2/21	\$67.00						
	Graciov	115	1/6	2/3	\$50.00						
	Wife	116	1/9	2/9	\$65.00						
	Edmonson	117	1/28	2/28	\$80.00						
	Wald	118	1/1	2/1	\$70.00						
	Siedler	119	1/23	2/5	\$90.00	7.00	97.00	8.00	8.00		
	Edmonson	119	checked out			5.00					
	Penfrew	120	1/17	2/17	\$67.00						
	Futsh	201	1/1	2/1	\$90.00						
	Walt	202	1/1	2/1	\$50.00						
	Kochler	203	1/23	2/23	\$60.00						
	Siedler	204	1/16	2/16	\$22.00						
	Groher	204	1/23	2/23	\$55.00	7.00	62.00			Total Petty Cash Expenditures	\$
	Hoffmann	205	1/1	2/1	\$60.00					Cash Deposited Herewith	\$
	TOTALS				\$	\$	\$	\$		Balance on Hand	\$

Receipts and Payment for Supplies

Signed by

TE	TENANT'S NAME	Ac. No.	Amount	From	To and Incl	Rent	Miscellaneous	Total	Paid Date	Rent Schedule	Cash on Hand	Cash Received	Total	Item	Amount
	Rasmussen	206	55.00	1/28	2/28	55.00									
	Ringer	207	65.00	1/1	2/1	65.00									
	Moff	208	60.00	1/5	2/5	60.00									
	Forthertone	209	65.00	1/28	2/28	65.00									
	Munter	210	65.00	1/13	1/27	32.50									
	Caplan	210	55.00	1/27	1/27	30.00									
	Thurman	210	77.50	1/31	2/7	17.50	2.00	20.00							
	Burke	211	60.00	1/1	2/1	60.00									
	Metz	212	65.00	1/25	2/25	65.00									
	Behndinger	214	65.00	1/1	2/1	65.00									
	Motile	215	65.00	1/14	2/14	65.00									
	Andersson	216	65.00	1/24	2/24	65.00									
	Barner	217	80.00	2/1	3/1	80.00									
	Berner	218	60.00	1/1	2/1	60.00									
	Thornad	219	90.00	1/1	2/1	90.00									
	Young	220	67.50	1/1	2/1	67.50									
	Blankman	301	90.00	1/27	2/27	90.00	1.00	- Exp. amount							
	Coleman	302	85.00			120.00		(In Last Report)	750.00	D					
	Wood	303	65.00	1/6	2/6	65.00									
	Burke	305	60.00	1/19	2/19	60.00									
	Harley	306	60.00	1/4	2/4	60.00									
	Johnson	307	65.00	1/1	2/1	65.00									
	Schragger	308	65.00	1/28	2/28	65.00									
	Schmidt	309	60.00	1/1	2/1	60.00									
	TOTALS	304													

To 12/1 25.00
 1/1 86.00
 2/1 85.00
 Paid 195.00
 Balance 120.00
 75.00

Total Petty Cash Expenditures \$
 Cash Disbursed Herewith \$
 Balance on Hand \$

Receipts and Requisition for Supplies

Receiver's Exhibit No. 3 - (Continued)

Signed by

TENANT'S NAME	Appt. No.	Rent Rate	RENTAL PERIOD		CASH RECEIVED			Amount Paid Due	Vacant Rent Schedule	CASH REPORT	
			From	To and Incl	Rent	Miscellaneous	Total			Cash on Hand	
Bonding	310	65.00	1/30	2/30	65.00					Cash Received	\$
Walt	310	65.00	1/6	2/6	65.00					Total	\$
Walt	311	65.00	1/1	2/1	65.00					PETTY CASH EXPENDITURES	
Walt	312	65.00	1/1	2/1	65.00						
Walt	314	65.00	1/1	2/1	65.00						
Walt	315	65.00	1/1	2/1	65.00						
Walt	316	65.00	1/1	2/1	65.00						
Walt	317	65.00	1/1	2/1	65.00						
Walt	318	65.00	1/1	2/1	65.00						
Walt	319	65.00	1/1	2/1	65.00						
Walt	320	65.00	1/1	2/1	65.00						
Walt	401	90.00	1/1	2/1	90.00						
Walt	402	95.00	1/1	2/1	95.00						
Walt	403	65.00	1/1	2/1	65.00						
Walt	404	65.00	1/1	2/1	65.00						
Walt	405	65.00	1/1	2/1	65.00						
Walt	406	65.00	1/1	2/1	65.00						
Walt	407	65.00	1/1	2/1	65.00						
Walt	408	65.00	1/1	2/1	65.00						
Walt	409	65.00	1/1	2/1	65.00						
Walt	410	65.00	1/1	2/1	65.00						
Walt	411	65.00	1/1	2/1	65.00						
Walt	412	65.00	1/1	2/1	65.00						
TOTALS	404									Total Petty Cash Expenditures	\$
										Cash	\$
										Balance on Hand	\$

Receipts and Requisition for Supplies

Signed by

Requisition Exhibit No. 3-(Continued)

mony of Maude Kennedy.)

By Mr. Whyte): Again I am going to put questions to you concerning which apartments were vacant as of the close of January 1954. Direct your attention to Apartment No. 304

— A. No, it wasn't rented.

That wasn't rented?

That is right.

Fine.

Or it would have been on there.

And Apartment 404, are you able to state that that was rented as of the 31st of January,

That was rented for two nights.

From when to when? [363]

1-24 to 1-26.

Will you examine this Exhibit 3 and tell me if any other apartments were vacant as of January 31, 1954, besides Apartment No. 304 and Apartment No. 404?

119 has—this lady didn't check in until the 19th of January. 119 was vacant.

Was 119 occupied as of January 31, 1954?

No,—yes. She came in there on the 23rd of January.

And she remained through the 31st of January.

She is still there. But we always have better luck in these three months.

(Testimony of Maude Kennedy.)

The Court: Well, it isn't responsive to the question, but it was a statement which could have been made in response to a question which could have been asked. We will let it stand.

Q. (By Mr. Whyte): Any other apartments here which you find to be vacant as of the January 1954?

A. No; three of them.

Mr. Whyte: No further questions.

Redirect Examination

Q. (By Mr. Enright): How many vacant apartments do you have now, Mrs. Kennedy? [364]

Mr. Whyte: Objected to as immaterial and irrelevant within the time of the receivership; has not been asked to do with this case.

The Court: Overruled.

Mr. Whyte: And if she knows, no foundation has been shown she is now the manager of this apartment. She is not testifying from any reports. She is testifying only from memory and no longer the manager.

The Court: Well, she was the manager until the close of business on the 15th, as I understand it, and if the place just cleared out on the 15th, there might be some evidence of the development of the condition there which, if it did go to that extent, if everyone moved, would create an inference that there had been a bad period of management immediately preceding.

mony of Maude Kennedy.)

(By Mr. Enright): Tell me, did they re-
you yet as manager today?

No. They have had two managers. They
stay. I am still there packing.

You are still there? A. Yes.

Now, how many vacancies did they have
last week or as of Saturday night, or what-
te you want to select? [365]

Well, it was around 15. And I think maybe
I don't want to say for sure.

Did you ever have that many vacancies when
chman was managing that property?

No, never.

Did you ever have that many while the Re-
was managing the property? A. No.

Whyte: Objected to as no sufficient founda-
d.

Court: She has answered no. We will let
l.

Whyte: Thank you.

(By Mr. Enright): Now, it seems as though
s a little dispute here about whether you
to Mr. Harrison at the time that refrigera-
problem arose.

Whyte: Objected to as going beyond the
examination; not within the scope of the

Court: We will allow it.

(Testimony of Maude Kennedy.)

bered it, because Miss Findeisen called me t
ernoon after Mr. Hallberg had called me and
to the Frigidaire man, and said that Mr. H
was very pleased with the way that I had h
the situation. So it was Miss Findeisen a
Mr. Harrison. [366]

Mr. Enright: Those are all the questions

Mr. Whyte: No further questions.

(Witness excused.)

Mr. Enright: May she be excused?

The Court: Yes.

Mr. Whyte: The Receiver and his attorn
their case in chief, your Honor.

Mr. Enright: I will call Mr. Richman.

FREDERICK I. RICHMAN

recalled as a witness on behalf of the defe
having been previously duly sworn, was ex
and testified further as follows:

Mr. Martin: May it please the court, m
record show I am appearing at this time
case again?

The Court: Yes. You came at the begin
today's proceedings, didn't you?

Mr. Martin: That is right.

The Court: Now, did the young man, w
been sitting here the last few days, represen
office?

Mr. Martin: That he did, your Honor. I t

mony of Frederick I. Richman.)

happening here I felt it my bounden duty to

Direct Examination

(By Mr. Enright): Have you made a study of the records of the Richman Trust and of the same, to ascertain the amount of rents received by the Trust for the four-month period, December 1, 1952, through February 28, 1953, on the one hand, as compared with the four-month period, December 1, 1953, through February 28, 1954, on the other hand?

Whyte: May I have that question read? I think you mean three months.

Enright: Three months.

(The record was read.)

(By Mr. Enright): How did they compare?

Whyte: Well now, I will object to that, as no sufficient foundation has been laid for that. The records and records are the best evidence.

Court: Sustained. You will have to lay a more sufficient foundation for it. I think it is a proper question of evidence and might be a very useful bit, but it should be a firmer foundation.

Witness: May I get the ledger?

Court: Certainly.

(By Mr. Enright): Have you had any experience in keeping books and records, Mr. Rich-

A Yes

(Testimony of Frederick I. Richman.)

Q. When did you graduate from college?

A. 1927, academic; law 1928. [368]

Q. Did you have anything to do with the books and records of the Richman Trust during the period from its formation, January 1, 1946, to December 1, 1953? A. I did.

Q. What did you have to do with them?

A. The books were set up under my direction and also Mr. Levering, a certified public accountant, and kept by my secretary, under my direction the entire period of time, up until November 1, 1953.

Q. You checked the books each and every year that you were agent for the Trust?

A. I did.

Q. Have you made an examination of the Receiver's books and records? A. I have.

Q. Are they here in the courtroom?

A. They are.

Q. By the way, does the Receiver keep a journal?

A. He certainly does. There is a journal in the books.

Q. And he has had that journal ever since January 1, 1954?

A. It shows that the journal was used up to the Receiver's books as of January 1, 1954.

Q. Has it been posted up to date? [369]

mony of Frederick I. Richman.)

in error when he stated there was no journal—that right?

Whyte: Objected to as leading and sugges-

Court: Sustained.

(By Mr. Enright): What is the fact concerning the Receiver having a journal?

The Receiver's books have a journal. It would be impossible to keep a set of double entry without a journal.

Whyte: I move the last——

Court: Have you seen the Receiver's journal?

Witness: I have.

(By Mr. Enright): Is it here in the courtroom?

A. It is.

Now, did you examine the books and records of the Receiver, to ascertain the answer to the questions I have placed before you?

I took the figures off the Receiver's Petition and Report to the Court.

That is, his formal Petition he has filed here in court? A. That is correct.

State the results of your making this comparison for those three months' period, December 1, 1952, through February [370] 28, 1953, and December 1, 1953, through February 28, 1954.

Whyte: There is still no sufficient foundation

(Testimony of Frederick I. Richman.)

The Court: What about that?

Q. (By Mr. Enright): State what the of the books was that you kept.

A. The books are in the courtroom. A ledger was kept under my supervision, while them. I have taken the figures out of the ledger of the old books of the Richman Trust, were brought here to the courtroom.

Q. Do the books reflect the gross rents, ceived by each apartment house?

Mr. Whyte: I object to that. No sufficient dation has been laid. The books are the be dence of what they reflect.

The Court: The books are here, are they

Mr. Enright: Yes, they are.

The Witness: Yes.

The Court: They may be marked for ider tion and will be available to Mr. Whyte for examination. They need not be introduced in dence. We will hear the main questions asked the foundation of the books being here and availability for use of the Receiver's attorney

The Witness: The books disclosed that f months of [371] December 1952 and January and February 1953 that the gross rentals the five apartment buildings of Richman amounted to \$97,404.58.

The Receiver's report, filed in this action,

ony of Frederick I. Richman.)

ry 1954, show gross rentals from the five
ent buildings of \$93,776.24.

Court: Mr. Richman, pardon the interrup-
re you going to provide me with a summary?

Witness: I have no summary, your Honor.
is at noontime.

Court: I had better take it as you go along
ive me that answer again.

Witness: December 1952, January and Feb-
953, \$97,404.58.

umber 1953, January and February 1954, \$93,-
to which should be added the sum of \$1,-
being February collections which should
en collected by the Receiver, but were not
l by him; were collected by the plaintiff,
0.59; making a total——

Whyte: That is objected to, that portion of
wer, as being a conclusion of the witness,
y they should have been collected by the Re-

Court: Sustained. That is a conclusion of
. Richman. [372]

Witness: Then the \$1,290.59 should be in-
in February rents, in order to arrive at a
able figure to the ninety-seven thousand here-
given.

ng a comparative figure of operations of
e months under the Receiver of \$95.066.83.

(Testimony of Frederick I. Richman.)

er's books and records to ascertain how much rents was collected on February 26th, 27th and 28th?

A. The Receiver's books do not show any collections there, but the reports of the managers which were part of the Receiver's records, show the amounts that the managers collected and were holding themselves accountable for, for the month of February.

The Receiver's collection is \$1,290.59 less than the managers reported on the month-end reports, which were similar to the Exhibits 1, 2 and 3 of the Western Arms, Receiver's exhibits.

Q. So the Receiver's Petition, wherein he cites, on page 12, that he estimated there to be \$2,000.00 of rents collected on those three days, February 26th, 27th and 28th, upon your checking the reports you found it to be \$1,290.59, is that correct?

A. That is correct. [373]

Q. Now, directing your attention to your former contract with the Richman Trust, to pay you ten per cent fee, did you at the time that contract was made own half the assets that became the assets of the Richman Trust?

A. I did.

Q. What had been your business experience in reference to those assets and similar properties during the previous approximate 15 to 18 years?

A. I had been operating the assets at the time the assets went into the Richman Trust, upon the

ony of Frederick I. Richman.)

I have been general manager of an oil company, had my own oil production, had a general contractor's license, and had had an automobile, and many other business ventures.

You had had experience in this Los Angeles before you became agent of this Trust, is that

Yes, I had run apartment buildings for some independent trust companies here in Los Angeles.

What was back how far?

That was about 1932, during the Depression. There was nothing to do, to run them then; merely to collect rents.

Were you also a licensed attorney at law?
No, I am.

And were at the time you entered into this Trust for ten per cent? A. I was.

What was the approximate value of the assets that were transferred by you and the other trustees at the time the trust was created in November of 1945?

Whyte: I don't see the materiality of that question, your Honor.

Court: It might be. On the chance it might be, I will let it in.

Isn't, you can move to strike it out.

Witness: My recollection is about \$375,-

(Testimony of Frederick I. Richman.)

A. \$1,200,000.00. You mean the net value assets?

Q. Yes. A. Yes.

Q. Now, did you pay the expenses of the aging of the properties out of your ten per cent?

A. I did. I furnished the office, telephone equipment, all stenographic and bookkeeping tax work, and paid the phone bill, paid the p

The Court: Did you pay the phone bills i of the [375] apartment houses?

The Witness: No, the phone bills for the individual apartment houses were paid by the But for the general business of the Trust, was conducted out of my office, I paid the bill. The Trust did not pay the phone in my

All ordering and conferences with supplies all business of the Trust was, except the housekeeping as would be taken up with the managers there, conducted from my office.

The Court: The managers were also paid Trust?

The Witness: That is correct.

The Court: What about Mr. Harrison?

The Witness: Mr. Harrison was paid by r tively. He was never an employee of the Tr never was any other secretary of mine an em of the Trust. I paid the Social Security, unem ment, compensation insurance on my secretar

The Court: The books and records of the

mony of Frederick I. Richman.)

Witness: I did.

Court: Did you ever get any legal fees before the ten per cent contract fee for management?

Witness: I did not.

Court: Did you ever charge for any, when you got [376] it or not?

Witness: No.

Court: Did you ever hire any outside law-
to render legal services?

Witness: On occasions I did.

Court: In general, what was the character
of the attorneys did?

Witness: During the regime of the Office
Administration, with rent control, in en-
deavoring to obtain more income from the Trust,
which resulted in that very end, the Trust was
sued, I think it was, 27 tenants at the Fountain
Hotel. It was a rather long suit. With the consent
of the Trust, Tidwell I hired outside attorneys to repre-
sent the Trust in that case.

There was one suit filed against the Trust
for approximately eight or nine thousand dollars
in reported rent overcharges. I hired an attorney
for that matter.

As near as I can recall at this time, the amount
of the overcharges determined was \$110.00, I be-

(Testimony of Frederick I. Richman.)

Q. You rendered all legal services that were received by the Trust yourself, excepting trial?

A. Yes. [377]

Q. I guess there were some trials you took of, Municipal Court trials?

A. Unlawful detainer actions, I would take of all those matters, and things like that.

The Court: Did you have many of those?

The Witness: Had a lot of them.

Q. (By Mr. Enright): That was during control?

A. During rent control. Because you could take the courts to, if you could convince the court that rent was undesirable, why, you would be able to obtain a semblance of control over your buildings. And it was very desirable to prosecute those in order to obtain control of your buildings.

Q. You made an examination of the records kept by the Receiver? A. I have.

Q. In making that examination, did you sustain any expense or discover any expense that the Receiver himself, incurred as a result of his coming over and being Receiver in this matter?

A. I don't know of any. He used one of the apartments at the Oliver Cromwell, rent free, and an office. He used the telephone.

There is no evidence of any charges against the receivership for telephone charges, so I imagine that they are all included [378] in the Oliver Cromwell.

mony of Frederick I. Richman.)

the Trust funds for payment of that salary. paid the Social Security, unemployment and nsation on Harrison, and also on Findeisen the Trust bank account.

Now, have you before you the Receiver's statements? A. I have.

Will you examine them and state as to what amount of money was on deposit as of 10-20 e end of each month?

The receiver commenced with the bank ac- in the Union Bank and closed that bank ac- out about the 29th of January.

Receiver also opened a bank account at the as National Bank as of December 17th. And account, according to these statements, is still

of December 10th the statement shows on de- n the Receiver's account—this is 1953—\$24,-

Whyte: What date was that, Mr. Richman?

Witness: December 10th. As of December 53, in the Union Bank \$24,462.09.

as of December 22, 1953, in the Citizens \$3,035.04.

of the end of December, in the Union Bank 67, [379] and in the Citizens Bank as of the December \$7,940.04.

of January 11th, in the Union Bank \$1,275.17

(Testimony of Frederick I. Richman.)

As of January 20th, in the Citizens Bank 201.81.

As of the end of January, in the Union \$250.00.

At the end of January, in the Citizens Bank 224.61.

As of February 10th, Union Bank, \$250.00
Citizens Bank, \$29,788.31.

As of February 20th, Union Bank account closed by that time, and the Citizens Bank 626.26.

As of February 26th, 1954, in the Citizens \$31,934.10.

Q. (By Mr. Enright): Based on your experience in operating these properties, the period through 1953, was there ample cash on deposit to operate with?

Mr. Whyte: Objected to as calling for a conclusion of the witness, your Honor.

The Court: Overruled.

The Witness: Outside of the occasion when Villa Carlotta had been sold, I never had an account like that to operate the Trust with.

The Court: Was your second installment of taxes paid on any of these properties at the time the Receiver ended his duties?

The Witness: I paid the entire year installment of taxes [380] on two of the properties in November of 1953, before the Receiver took over.

mony of Frederick I. Richman.)

fourteen thousand dollars,—was what the half of taxes were—had been paid, according records of the Receiver.

On February 28, 1954, there would have been payments for March and 20 days' collections in which would have been added to the bank account, to pay the \$14,000.00 tax bill on April 20th. (By Mr. Enright): Now, directing your attention to the Oliver Cromwell payment, do you check there, Receiver's canceled check, I mean for about \$2,027.00, for the payment on the Oliver Cromwell due on March 1, 1954?

I have.

Do you have checks immediately preceding and succeeding that check there before you?

You are talking about the March 1st pay-

Have you the checks of the previous payments too?

I have the checks here for January 1st, February 1st and March 1st payment on the Oliver Cromwell.

When were they cleared?

The check No. 204 to Pacific Mortgage Corporation, dated December 31, 1953, for \$2,027.25, perforation through the check marked "Paid in full." [381]

checks of the Receiver preceding, starting

(Testimony of Frederick I. Richman.)

Check 186, to Few Electric, dated December 1954, shows as having been paid January 22, 1954.

The Court: Mr. Enright, I don't want to ask you, but just for information, how long is it going to take to present your side of this case?

Mr. Enright: Well, it is going to be awful difficult to complete it this afternoon.

The Court: I don't expect you to. It would be practically impossible, since I am going away from you have, in addition to needing the Receiver's decision decided here, you have a dispute with Mr. Martin's client. I think they should be decided together. I might be there are offsets of the Receiver's claim, nonetheless, ought to be paid by Mrs. Tidwell. These things I can't tell until we have all the evidence and possibly have had some briefing and search on it.

But I would like to finish them all in one sitting, if we can. How long do you think it will take?

An awful lot of this, it would seem, could be agreed to. I don't mean agreed as to the results of what the evidence is. It is simple to look at the bank statements and determine when payments were made and what the amounts were. As far as it seems to me that the dates on which some of the payments [382] were made might be controlling.

Mr. Martin: If it please your Honor, if you would include me in your remarks.

r. Camusi will handle those details and he is familiar with them than I. What his situation isn't recall.

understood that that particular phase of the case had been put over to a day certain. What day certain that was I don't remember. It was to do with at that time.

Court: I don't even remember that it was a day certain. Was it, Mr. Clerk?

Martin: Mr. Camusi indicated to me there might have been a misapprehension on that, and now the decision of this, or, at least, the substance of this particular matter.

The record might be checked on that. I haven't read those details in that sense.

Court: I know we talked about a pretrial, between your office and Mr. Enright's. It seems the thing is simple enough and the pretrial would suffice for the trial, if we were to have the trial instead of the pretrial.

Martin: I wouldn't want to involve myself in a definite statement. Mr. Camusi would handle the details.

Now he came back to the office, after having been down [383] here, and told me, among other things, that this other phase of the matter had been put off either for pretrial or some other purpose, to a later date. I think he so informed me a week or so ago. I don't remember just when.

The Clerk: June 18th.

The Court: I see it is June 18th, the clerk informs me. Would this be practical, Mr. Enright? You are not going to be here tomorrow?

Mr. Enright: No, I have made other arrangements, your Honor. I understood you were to start your criminal matter in the morning.

The Court: I am. We can still work in time, if we are going to be free. But how about taking this matter up again? Do you think we can conclude it on a Monday? You know how Mondays are interrupted here.

Mr. Enright: Yes.

The Court: If we could complete it on a Monday day, we might take it up on June 1st, so far as the Hallberg-Whyte petitions are concerned. That will leave us until the 18th to begin consideration of the Tidwell and Richman phase of it.

Do you think that is practical, or is trying to do this sort of thing on a Monday too difficult?

Mr. Enright: My belief is that we could get the defense could present their evidence, Mr. Richman's evidence, in approximately two to two and a half hours; not more than that.

The Court: Let's try.

Mr. Enright: But I do not want to mislead the court. I consider this contractual right belongs to Lyda Tidwell and her brother Frederick Richman as being entirely different from the Receiver's

o of them. They have a contract settling their
as to the balance of this fund.

Court: Well, let's continue the proceeding,
which we are now engaged, until Tuesday,
1st, at 11:00 o'clock.

Enright: Tuesday?

Court: Yes. May 31st is a holiday, so Tues-
day 1st, at 11:00.

Martin: At 11:00, sir?

Court: Yes. That Tuesday will be our law
motion day, for that week, and I will be busy
short matters for an hour.

I'm sorry to interrupt this just as you were
going well into this group of figures, but we have
no session, either in chambers or here, since
9:00 this morning, and I want to close. [385]
The court will stand adjourned.

(Whereupon, at 4:05 o'clock p.m., Monday,
May 17, 1954, an adjournment was taken until
Monday, June 7, 1954, at 11:00 o'clock a.m.)

* * [386]

Whyte: The court please, I should like to
ask the court's indulgence to reopen the case in
order for the Receiver and his attorneys, and put
briefly a witness with respect to the reasonable
amount of the attorneys' fee in connection with the
case of the Receiver.

It was taken by surprise at the testimony of Mr.
Horn which was given here at the last session

defense to the objections and participating in the hearing.

So with the court's permission, if it may be granted, please, I would like to call briefly Mr. Fussell of the firm of O'Melveny & Myers, to testify with respect to the reasonable value of those

The Court: Of course, the court can judge the value of attorneys' fee, even without any witness. I don't recall that you had any expert testimony on this field, apparently relying on the court's application of the pertinent rules, [388] and the fact that Enright produced a witness.

Do you have any objection to our hearing Mr. Fussell, Mr. Enright?

Mr. Enright: No.

The Court: All right. The motion is granted. We will reopen.

Mr. Whyte: Mr. Fussell, will you take the stand, please?

PAUL FUSSELL

called as a witness on behalf of the Receiver, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, sir?

The Witness: Paul Fussell.

Direct Examination

Q. (By Mr. Whyte): Are you an attorney, Mr. Fussell?

A. Yes, I am.

mony of Paul Fussell.)

For how long have you practiced law consuly in this State?

Since the early part of 1921; about 33 years.

The firm of O'Melveny & Myers, how large is that, sir?

Well, it is a firm of about 60 attorneys, including the partners and those who are associated with the firm. [389]

Are you the senior partner of the corporation management of that firm? A. Yes.

Would you please tell the court what experience, if any, you have had with receiverships of trustees in possession of apartment houses and buildings, properties of that type?

Well, I think that during the '30's in particular that I represented trustees in possession of approximately 30 buildings in Southern California, mostly in Los Angeles, some being office buildings, hotels, and some apartment houses. I think apartment houses were the most numerous of the three classes.

Where were those apartment houses located, Paul Fussell?

Well, the Los Angeles apartment houses were located largely in the western part of Los Angeles, Hollywood, such apartment houses as the Arcady Apartment House, 2424 Wilshire Boulevard, and

(Testimony of Paul Fussell.)

Q. Mr. Fussell, I will ask you to please answer the following facts:

Assume that John Whyte, the attorney for the Receiver herein, has been engaged in the practice of law in [390] Los Angeles, California, for a period of 12 to 13 years;

That the receivership in this matter continued for a period of three months, that is to say, from December 1, 1953, until February 28, 1954;

That following the expiration of the receivership the attorney, Mr. Whyte, prepared a report for the Receiver and petition for fees, as well as a petition for fees on his own behalf, as attorney for the Receiver;

Following the filing of those reports and petitions with the court there was filed herein by defendant Frederick I. Richman objections to the report of the Receiver and his petition for fees as well as objections to the petition for fees of the attorney, wherein an attempt was made to surcharge the Receiver for sums in excess of \$8,000.00 on account of his alleged mismanagement of the estate;

Further assume that the receivership assets consisted of principally five apartment buildings, the value of which was in the neighborhood of a million and a half dollars;

And I shall further ask you to assume that in connection with the defense of the Receiver

mony of Paul Fussell.)

in 16 to 17 hours of his time in preparation for these hearings, in defending the Receiver;

that the hearings have already consumed approximately [391] four full court days, with the prospect of another court day before us, and possible additional time.

Under those circumstances, and based upon those facts, do you have an opinion as to the reasonableness of the attorneys' fees in that connection?

Enright: To which objection is made upon the ground it misstates the facts of the record, that it awards a surcharge of \$8,000.00.

We object to the accounting and ask the plain-
deffendant be charged with having received those moneys.
And, finally, we object upon the ground it misstates
the facts of record, particularly, for example,
it fails to state that the attorney in preparing
the account for the Receiver failed to comply with
the court rules in setting forth the amount.

Court: Mr. Fussell, bear in mind, in answering
the question which is before you, that the
surcharge is not intended to be applied to the Receiver,
but rather to the successful litigant in the
present litigation.

Whyte: May I direct the court's attention to
the objections for a moment in that connection?

Court: Well, I think the objections as filed
do not undertake to apply the surcharge against the

(Testimony of Paul Fussell.)

against Mrs. Tidwell, who is not the receiver that right?

Mr. Enright: Yes, your Honor.

The Court: So the Receiver came here with pleadings which undertook to have him surcharged but the theory of trial, which was announced early in the trial, is that the attempt to surcharge is not against the Receiver, Mr. Whyte's client, but against the prevailing litigant in Tidwell vs. Enright. Does that state it?

Mr. Whyte: Is that your position, Mr. Enright, that you are not now trying to surcharge the Receiver?

Mr. Enright: We surcharged that Receiver. We asked that it be a charge upon the funds in his hands. That is the way we pleaded it. That is the way we stated it in the inception. I am sure the Receiver understood it that way.

The Court: Well, I don't know whether he clearly understood it that way at the beginning. Mr. Enright, because I didn't. And while I have great respect for the Receiver's ability to read and understand, I doubt if, when the court understood originally you were trying to surcharge the Receiver himself, he didn't draw the same conclusion as apparently Mr. Whyte did.

But it became apparent in this trial settling the Receiver's fees that the attempt is to surcharge the fund. [2021] or, as I stated originally, to surcharge

By Mr. Whyte): What is your opinion, Mr. ?

(Testimony of Paul Fussell.)

Mr. Whyte: You may cross-examine, Mr. Enright.

Cross Examination

Q. (By Mr. Enright): Would you assume, Mr. Fussell, for the purposes of the question of opinion, that the attorney for the Receiver was to advise the Receiver to collect \$785.00 of the fund, being three days' rents?

Mr. Whyte: Objected to as immaterial, Your Honor?

The Court: Overruled.

The Witness: On that assumption, and assuming that it was negligence on the part of the attorney to fail to so advise, I would think there would be a modest diminution in what would otherwise be a reasonable fee.

The Court: You assumed, in answering the question, the attorney for the Receiver had fully and correctly discharged his duty in that capacity.

The Witness: In answer to the question of the principal examination?

The Court: Yes.

The Witness: I assume he had done so within the limits of a prudent practitioner at the bar, sir. [395]

The Court: Thank you.

Q. (By Mr. Enright): Now, I stated that the fee was \$785.00. I should have stated that as \$1,290.00.

I now want to ask you another question, Mr. Enright.

mony of Paul Fussell.)

Receiver to retain in his possession \$785.00 cash, which the order he, the attorney, re-specifically directed the Receiver to retain of money.

Whyte: Again I want to register an objection on immateriality. I want to point out the a little more specifically.

Questions asked of this witness were with reference to reasonable value of the attorney's services in defending the Receiver against the objections raised to his report and petition for fees.

Court: Didn't the question go as to all the fees rendered by the attorney in the administration of the receivership?

Whyte: No, it did not, your Honor. The objection to Mr. Fussell went only with reference to the fee for one defending the Receiver against the objections filed. The testimony in the record by Mr. Whyte was that for the work—was the work of the attorney advising the Receiver during the period of the receivership, that the sum of a thousand dollars per month [396] was a reasonable fee.

The question being asked of this expert is with reference to the defense of the Receiver in this court proceeding and the preparation of the report. So that any questions with regard to how the attorney may have advised the Receiver during

(Testimony of Paul Fussell.)

entitled to so much for defending the Receiver against the objections to the report.

The Court: Objection overruled.

The Witness: May I have the question read?

(The question was read.)

The Witness: I think that would affect my answer, if two factors occur. First, if the failure stated on the part of the attorney was due to negligence or a failure to observe the standard of professional ability, which are customary in such matters, and, secondly, if it caused loss.

Q. (By Mr. Enright): Thank you, Mr. Fussell.

Now, assume further that the attorney failed to advise and did not advise the Receiver that the order of the Los Angeles Smog Control Board, which was not complied with by the Receiver, would subject the Receiver's agent, to wit, the manager of the apartment house and possibly other persons to criminal charges, to wit, a misdemeanor, and the attorney is [397] seeking extraordinary compensation for his services as attorney to the Receiver, to wit, a petition for extraordinary services and objections were filed, and we are here trying the objection.

Would that failure to advise have any bearing upon your opinion as to whether he should be compensated for presenting, and, may it please, for defending his application for fees?

Mr. Whyte: For the record, the same objection

mony of Paul Fussell.)

ed to the attorney for defending the Receiver
t the objections filed to his report.

can ask him with reference to anything the
y may have done in connection with advis-
e Receiver during the pendency of the re-
hip.

Court: Do I understand, Mr. Whyte, the
ea of inquiry with this witness, so far as you
ncerned, is the appearance here at the time
ng the accounting in open court?

Whyte: Exactly, your Honor. Just the ap-
ce and the preparation for this hearing. That
this witness was asked to testify to.

Court: All right. The objection is sustained.

Enright: May I point out, your Honor, that
question is directed to the proposition, we
s wouldn't [398] be here hearing these ques-
f fees had the attorney performed his duties.

Court: That is a matter to go into in deter-
g the amount of fees to be allowed for the
pal services rendered.

Enright: I wish to make an offer of proof,
rough this witness on the stand, he would
that the failure of the attorney to perform
uty would affect his opinion as to the amount
s he should receive, upon a hearing as to the
t of time taken to determine fees.

Court: The question of principal litigation

(Testimony of Paul Fussell.)

Apparently, it is Mr. Whyte's position that the court could determine the value of the services rendered by its own officer, and that some of the value of the services rendered at a trial can perhaps be appraised by the trier of fact.

Mr. Enright: I appreciate that, your Honor. We have a pyramiding. First he asks for \$3,000.00 plus extraordinary fees. And then he asks for compensation for the time to hear whether \$3,000.00 plus extraordinary is reasonable.

Mr. Whyte: You are mistaken. I am not asking for any compensation for the time I have spent up here in [399] defending my own case. I am asking Mr. Fussell for his opinion as to my compensation for defending my client, the Receiver, who was appointed as an officer of this court, and whose report is under attack. That is what I am asking for compensation for.

The Court: That is what I understood you to say. I sustained your objection.

Q. (By Mr. Enright): Now, Mr. Fussell, I assume that the attorney for the Receiver failed to allege in the petition what fees the Receiver sought for his services, in violation of the rules of this court, to specify the amount of fees the Receiver sought for his services. Would that affect your opinion?

The Court: I will have to take the respons-

mony of Paul Fussell.)

' and he asked whether he had to specify or
r to leave it to the discretion of the court.

t at the time—perhaps not having had that
given too much home in my consideration—
king for reasonable fees and leaving it to the
o determine what they should be upon hear-
evidence was the better practice. And rightly
ngly, I told him I would accept the report in
rm.

think if a lawyer goes to the judge for con-
[400] a matter, and the court gives it, that
malpractice.

Enright: I did not so consider it to be mal-
. I did consider it to be——

Court: It is not deviation from the reason-
udent representation of your client.

Enright: I desire to offer evidence that it
ariance from reasonable prudent presenta-
nat was the purpose of my inquiry.

attorney had failed to use reasonable pru-
n presenting the petition. He should have
the court of the rule and the reason of the
nd the research there available so the court
ave been informed when it made its order.

Court: Well, perhaps I should have kept my
the appellate court as well as on this court.

Enright: Well, I don't know what the ap-
has to do with this case. Is that a ruling?

(Testimony of Paul Fussell.)

The Witness: As I understand the question, the answer would be, in light of the additional circumstances stated by the judge, I should not deem it a failure to specify an amount in the petition for any reason to affect the amount which I stated in my principal answer.

Q. (By Mr. Enright): Now, will you further assume, for [401] the purpose of your answer as given, that Mr. Whyte, the attorney, failed to communicate with the attorney for the defendant in taking that matter up with the court.

Do you consider that should be considered as a factor that would affect your judgment as to his fault?

A. That would not, sir, no.

Q. It would not? A. No.

Q. Now, in addition to the \$785.00 and \$1,000.00, there was a third item of two thousand approximately twenty-nine dollars.

Will you assume that the \$2,029.00 was evidenced by a check drawn on the 27th of February, 1954, the day after the attorney for the Receiver had received a copy of the order of the court dated February 26th, and that the \$2,029.00 was not received by the payee until after March 1st, and that the payment of the \$2,029.00 by the Receiver was contrary to the order of the court on February 26, 1954;

And further assume that the attorney failed to notify or neglected to advise his client, the Receiver,

mony of Paul Fussell.)

Whyte: Again may I enter an objection to the question. It calls for evidence which is immaterial. It calls for evidence with reference to whether or not the attorney performed his duties in connection with advising the Receiver [402] during the receivership.

Q. Now, the reasonable value of his fee, in that connection, it might have some pertinency. Where this testimony is limited to the reasonable value of the attorney's services in defending the Receiver against the objections filed to his report, I submit that is material.

Court: Sustained.

Enright: I offer to prove through this witness that under the circumstances as stated in the question, it would affect and decrease the amount of the claim payable.

By Mr. Enright): Will you further assume the fact of this item, that in addition to the \$785.00 and \$290.00 and \$2,029.00, the \$3,000.00, a claim for services rendered before the Receiver was appointed, which claim the Receiver states in his accounting as being an account payable, but which the Receiver did not pay, and which \$3,000.00 plus \$2,000.00, making five plus the \$1,290.00, making \$8,290.00, plus the \$785.00, constituting less than \$9,000.00 is the so-called \$8,000.00 for which the Receiver says he is defending the Receiver, would

(Testimony of Paul Fussell.)

Mr. Whyte: Objected to again as immaterial. The question is highly uncertain.

The Court: Sustained. [403]

Mr. Enright: May I point out, your Honor, that they claim—the question asked of this witness is that he is defending a Receiver against a surcharge of \$8,000.00. He gave an opinion here it is \$1,000.00. There is no surcharge involved in the \$3,000.00. They acknowledged it as an accountable.

The Court: What it comes down to is this: The witness is asked his opinion of the value of time spent in drawing a pleading and trying a case. Every case has its merits and every case has its demerits. Whether there can be any allowance for it or not must depend on circumstances outside of the direct testimony of this witness. But we have to limit the examination to the question inquired into—direct.

We also have to apply an inquiry as to relevancy as to all testimony in the case after it is submitted, regardless of what the ruling might be at the time that testimony is offered.

Q. (By Mr. Enright): Mr. Fussell, would your opinion of the thousand dollars be in any way affected if you were to assume that over half of the time in court—I don't know how many of the 18 hours' preparation—have involved the failure

mony of Paul Fussell.)

No, I don't think it would be affected by any
on the part of the Receiver in those re-
[404]

You feel the attorney was entitled to a thousand dollars, is that it, for——

Yes, on the assumption that I am making,
the proceeding is being conducted in good
I feel that he is entitled to be paid for his
services, sir.

Enright: I have no further questions.

Whyte: I have just one question.

Redirect Examination

(By Mr. Whyte): Did I understand your
intention to be, Mr. Fussell, that you prescribed a
reduction from a thousand to twelve hundred dol-
lars for the services specified?

That is correct.

Whyte: I have no further questions.

(Witness excused.)

Court: Was that the extent to which you
wish to reopen your case?

Whyte: That is right.

Court: Do you want to begin now, Mr. En-

Enright: Yes, I will do my best. I will call
the witness back again. [405]

FREDERICK I. RICHMAN

recalled as a witness on behalf of the defense having been previously duly sworn, resumed stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Enright): At our adjournment Richman, I believe we were covering the sum matter of this two thousand dollars plus, the Oliver Cromwell payment.

Do you have before you the checks evidencing the payment on the previous months and on the month of March 1954? A. I have.

Q. Will you state from the checks when the payments were made the previous months?

A. Check No. 204, dated December 31, 1953, payable to Pacific Mortgage Corporation for \$2,027.25, marked in the voucher part of the "1-1-54 payment, MB 302912." And it bears perforations of having been paid by the bank on 1-18-54.

The part in the voucher part of "MB 302912" was the [406] number of the Oliver Cromwell Company with the Pacific Mortgage Company. The check was cashed.

The Court: May I have the amount of that check again?

The Witness: \$2,027.25.

Mr. Whyte: And the date, Mr. Richman?

The Witness: The date was December 31, 1953. That is the date of the check. The perforations

mony of Frederick I. Richman.)

re commencing with Check No. 185, to Col-Pest Control, dated December 31, and cleared bank on 1-20-54.

Check No. 186, dated December 31st, cleared the bank 1-22-54.

Check No. 187, dated December 31, 1953, cleared the bank 1-21-54.

Check No. 191, dated December 31, '53, cleared the bank 1-22-54.

Check No. 192, dated December 31, '53, cleared the bank 1-22-54.

Check No. 194, dated December 31, 1953, cleared the bank 1-20-54.

balance of the checks proceed through there, they were all dated December 31st, but did not clear the bank until around the 20th of January.

the check to Pacific Mortgage, being Check No. 314, was written after the December 31, 1953 and all checks had [407] been written.

regard to the February 1, 1954 payment, Check No. 314, dated January 30, 1954, to Pacific Mortgage Corporation, \$2,027.25, marked in the lower part "2-1-54 payment," is perforated by the bank as having cleared it on 2-9-54. That check was written after the payroll checks of January period, 1954.

checks just prior thereto and just following the payments from clearance at the bank of

(Testimony of Frederick I. Richman.)

Q. (By Mr. Enright): Now, this is the check involved, isn't it?

A. Yes. The check is dated February 27, '54, and is marked on the voucher part "3-1-54 payroll."

It shows perforation from the bank, as has been cleared the bank on 3-4-54; the 27th of February was a Saturday and was probably mailed out and received by Pacific Mortgage on the 2nd and deposited in their bank, and by the time it came to the branch of the Citizens Bank at 3rd and Western, through the clearing house, it would be marked "Fourth, '54."

That Check 433 was written before the payroll of February 28, 1954. The checkbook shows a stub part, commencing with Check No. 426. The stub was dated February 28th.

Check 426 is dated February 26th; 427 check number has no date; [408] 428 check number, dated February 25; 429 number was dated 2-28; 431 check number was dated 2-26; 432 check number was dated 2-27; 433 check number was dated 2-27. That 433 is the check in question, Pacific Mortgage Corporation. The last part of the checkbook shows payment of \$2,027.25.

Check No. 434 is dated 2-27-54. And then commencing with Check No. 435, it appears to be the payroll for the last half of February, and the last check dated 2-28-54.

The previous checks, the payroll was all written

ony of Frederick I. Richman.)

Whyte: That is all moved to be stricken as responsive to the question, pure conclusion of business.

Witness: The checks are here for your examination, to see whether the payroll numbered and the others fit in, Mr. Whyte.

Court: The motion will be denied. The court is to look to the exhibits, of course.

I don't think, in this sort of thing, we can cut oral testimony too close to the line or hold too close to the line of technical admissibility, insofar as it gives figures and dates and so on, it has to be verified from the documentary evidence, which, of course, is controlling, and its reference to those dates and amounts and so on is to direct the court's attention to other testimony [409] which the witness usually gives, which is upon the legal issues, rather than the purely

oral. I don't mean to hold that a particular fact will be or will not be considered material or immaterial, when it comes to submission of the case on the merits, and I am letting certain testimony stand which might be objectionable if we were going to rely on it instead of to the checks, because it is to orient the other oral testimony.

Witness: May I ask your Honor, do you

(Testimony of Frederick I. Richman.)

checks should be or some memorandum. Perhaps we can get it from the accounting, I don't know.

Just so we can go to some paper source and our computing from that.

The Witness: Well then, that would be wished in evidence Check No. 204 and these checks.

The Court: Either the checks or some memorandum. I have seen reference to these in something. I don't know if it was an affidavit or if it was the Receiver's report, or what.

But it should be before the court in its documentary form or by way of an admission.

Mr. Enright: I will offer in evidence the checks the witness has just read from. [41]

The Court: Received.

The Clerk: Defendants' D.

(The documents referred to were received by the Defendants' Exhibit D and were received in evidence.)

Q. (By Mr. Enright): The amounts of \$2027.25, evidenced by the February 27, 1954 check, was in payment of the March 1st installment of the Oliver Cromwell loan, is that correct?

A. Yes. It so shows in the stub of the check book and on the voucher part of the check, and according to the books, it was the payment that was not due until March 1, 1954. The previous payments had been made.

Q. Now I want to direct your attention

mony of Frederick I. Richman.)

the period sometime December 1st to December 4, 1953? A. Yes, I did.

Court: Mr. Enright, I would rather like to discuss the Oxy-Aire matter in one sitting, so we will prudently adjourn now until this afternoon. Would you say 1:45 would be convenient?

Enright: Yes.

Court: 1:45.

Whereupon, at 12:00 o'clock noon, a recess was taken until 1:45 o'clock p.m. of the same day. (r.) [411]

Los Angeles, Monday, June 7, 1954, 1:45 p.m.

Court: Proceed.

FREDERICK I. RICHMAN

as a witness on behalf of the defendants, having been previously duly sworn, resumed the examination and testified further as follows:

Direct Examination—(Continued)

By Mr. Enright): I believe, Mr. Richman, that you stated you had had a conversation with Mr. [redacted] and Mr. Whyte during the period December 1st to December 4th. Now, do you have any way of ascertaining what day it was you had that conversation?

Yes. The conversation took place December

(Testimony of Frederick I. Richman.)

Q. What was said?

A. On that occasion it was the first time the Receiver and Mr. Whyte had come in office since the appointment. I was going over current files with them at the time.

I showed them the current file on the smog situation at the Oliver Cromwell and at the Cante. And I informed them that the trust had received a notice to apply for a permit; [412] that we applied for a permit. And it had been denied on the grounds the incinerator, as it existed at that time, could not continue without some correction and that I had entered into a contract with Oxy-Aire—it wasn't called Oxy-Aire at that time—to put in a catalytic agency and the application together with the plans, had been filed, but as we had not received back the approval on it. It wasn't anything to do on that matter until the approval came back from the Air Pollution Control District.

Q. Did you later receive a document designated "Approval" or "Approved"?

A. I received back the application with the plans marked, "Approved," on them on December 7, 1953.

I immediately put the documents into another envelope and mailed them to Roy E. Hallberg, South Normandie, Los Angeles 5. He had taken

mony of Frederick I. Richman.)

When was the next time you heard any more thing concerning this Oxy-Aire contract?

About the middle of the month Mr. Manalis Oxy-Aire Company called me and wanted to know if I had gotten the application back.

Whyte: Objected to as hearsay, your Honor.

By Mr. Enright): You received a telephone call about the middle of what month? [413]

December.

Do not state what the substance of the phone call was.

Court: The exact conversation goes out. The fact that the call was made, the fact of the call remains.

By Mr. Enright): After receiving this call about the middle of December 1953, what did you do?
A. I did nothing.

When was the next time that you heard anything concerning the Oxy-Aire contract?

January 29, 1954.

And what occurred at that time?

I had left my office and gone home. My secretary called me and said Mr. Whyte had been trying to get in touch with me.

Then what did you do?

I tried to contact Mr.—my secretary gave me a message that Mr. Whyte had left there, that there was a criminal complaint to be heard February 1st in Lincoln Heights Jail and I was named

(Testimony of Frederick I. Richman.)

ona del Mar, but was unsuccessful in reaching at either place.

Q. January 29th was a Friday, is that correct?

A. That is correct. [414]

Q. Did you appear in criminal court on February 1st? A. I did.

Q. Who was present at that time concerning this matter?

A. Mr. Whyte was present, you were present, the judge was present; that is all—the judge.

Q. Was the manager of one of the houses there, too, also?

A. No, the manager was not there.

Q. What occurred in connection with this Aire contract at that time?

A. I was charged with a criminal violation of the Public Health and Safety Code and was released on my own recognizance.

Q. What services did Mr. Whyte render, if any, as you observed, at that time?

A. None that I know of.

Q. Was there a statement made in your hearing in the presence of Mr. Whyte?

A. There was a statement made by Mr. Ennis, my attorney, in the presence of Mr. Whyte, the judge to the effect I no longer had anything to do with the properties and that it was a matter between the Receiver and the Smog Control Dis-

mony of Frederick I. Richman.)

Did you find in it a letter prepared or purported to be prepared by Mr. Hallberg?

I have the letter here.

I direct your attention to a letter dated May 22, 1954, and particularly to that portion pertaining to drawings, or approved plans. Do you find that in there? A. I do.

Now, when examining the Oxy-Aire file, did you ascertain what occurred with reference to those drawings?

Not from the file. I ascertained it with my conversation with Mr. Harrison on January 30th, and that happened to it.

Mr. Harrison, that is the bookkeeper and clerk of the Receiver? A. That is correct.

State what was stated, said by the agent, Mr. Harrison, concerning the Oxy-Aire contract file.

Whyte: Objected to as calling for hearsay evidence, your Honor, and being offered as evidence of the truth of the fact which he is attempting to prove from this witness.

Court: What about it, Mr. Enright?

Enright: Mr. Harrison is the agent and employee of the Receiver. It is not hearsay, what his conversation with the Receiver did. [416]

Whyte: He is not a party to this proceeding.

Court: Overruled.

Witness: After January 29th when I

(Testimony of Frederick I. Richman.)

find out what the situation was relative to criminal complaint that I was supposed to Lincoln Heights Jail on February 1st for.

The Court: Do you mean in jail?

The Witness: That is where I was told to Lincoln Heights Jail.

The Court: You weren't actually told to jail, were you?

The Witness: Yes; Lincoln Heights Jail.

The Court: Weren't you directed to the Department of the Municipal Court that meets in the building?

The Witness: That is where it turned out over there.

The Court: It wasn't in a cell, was it?

The Witness: No.

The Court: Throughout the hearing people referred to going to Lincoln Heights Jail. the other evidence on the matter it has seemed me they were merely cited to the court which convenes in the building where the jail is located.

You don't consider that you come to jail you come up here, and yet the Marshal has detention rooms in this building, and people are detention there right now.

Q. (By Mr. Enright): Did you ever appear in any court upon a criminal charge of any kind, other than this one? A. Myself as the defense.

Q. Yes. A. No.

ony of Frederick I. Richman.)

of the drawings on the Oxy-Aire contract approval by the Board——

asked Mr. Harrison what it was all about. Harrison stated he had just heard that after the criminal complaint and Mrs. McCon- manager at the Oliver Cromwell, also was as a defendant.

ed Harrison what happened, as I thought ing was taken care of. I told Harrison I the application, approved, and drawings d been approved by the Smog District to llberg.

Harrison said that Mr. Hallberg had received hat he had discussed the matter of the con- with Mr. Whyte and Mr. Whyte had advised llberg he was not bound by those contracts. Harrison told me that Mr. Hallberg directed call Oxy-Aire and tell them to do nothing matter. [418]

Harrison stated that just about that time nalis called him and wanted to know where ns were, and Harrison stated that he told nalis that the Receiver was not bound by tract and just to hold up everything.

requently, Mr. Harrison stated on about the of January a citation had been received for n at the Oliver Cromwell. Upon receipt of olation Mr. Hallberg had directed him, Mr.

(Testimony of Frederick I. Richman.)
told him to proceed, and Mr. Manalis said
not have the plans and specifications.

That occurred along about the 13th of Ja
as near as Mr. Harrison could recollect. An
Harrison stated that he looked in the office
approved plans and application from the
District, but could not find them.

And the next time he was able to get in
with Mr. Hallberg was when he came to th
of the Receiver at the Oliver Cromwell on J
22nd. Mr. Hallberg went through his briefca
found the application and approved plans.

That Mr. Hallberg then dictated the lett
Mr. Harrison to send to the Air Pollution C
Inc., which Mr. Hallberg signed, enclosing th
and specifications [419] and the approval of
plication to Air Pollution Control, Inc.

That Mr. Harrison stated that Mr. Hallbe
told him to call them and get them on the
in a hurry.

Mr. Harrison stated that Air Pollution C
Inc. stated that there was a shortage of a
material at that time, and they didn't quite
when they could get on the job. But they
get onto it as quickly as they could.

Mr. Harrison stated that the next thing h
about it was the filing of the criminal actio
Mrs. McConnell, the manager at the Oliver
well, was all upset about the matter.

mony of Frederick I. Richman.)

in with, the testimony of an agent is not upon his principal unless it is made during course of his employment.

There is no showing here that any conversations Mr. Harrison had with Mr. Richman, in direct violation of the order appointing the Receiver, states in so many words that the plaintiff, Tidwell and the defendant, and so forth, are enjoined from disturbing possession of the Receiver in any manner molesting the Receiver or interfering directly or indirectly with the administration of the receivership. [420]

There was no authority, no authority in Mr. Harrison to talk with any agent of the Receiver to discuss the matter with the Receiver, without the permission of his attorney or without the permission of this court.

Court: Don't you think he could call and get information?

Whyte: I beg your pardon?

Court: Don't you think he could properly call and ask for information?

Whyte: Surely, but to go behind the Receiver's back, as Mr. Richman did in this instance, to go out and talk to his agent behind his back, to interfere with his operations without his knowledge, is to me that those statements are clearly outside the scope of the agent's authority.

(Testimony of Frederick I. Richman.)

The Witness: I tried to get hold of the receiver.

Q. (By Mr. Enright): Mr. Richman.

A. And he wasn't available. I have never been charged with a crime before in my life.

Mr. Enright: I know that this is——

The Witness: Talking about my going back on somebody's back——

The Court: If you will just restrain yourself, the court will protect you. [421]

Mr. Whyte: Mr. Harrison is not here. He is not subject to any cross examination by me as to the wild statements that have been made.

Now, I submit again that is purely hearsay evidence.

The Court: I don't think going to Mr. Harrison under the circumstances, was out of order. I don't have the circumstance that a man has been charged for violation of a criminal law. He tries to get in touch with the Receiver. He tries to get in touch with the Receiver's attorney. He is unable to do so.

The transaction to be litigated grows out of the property, the management of the property in which the man has an interest. He is a defendant or prospective defendant in a criminal prosecution.

Doesn't he have a right to seek such information as he can and is not harassing Mr. Hallberg's interests at that time?

Mr. Whyte: Mr. Harrison was Mr. Hallberg's

mony of Frederick I. Richman.)

, are certainly not within the scope of his
ment by—he is not being paid by Mr. Hall-
go around, telling third persons about how
ng is being operated.

Richman didn't go to him and ask when the
l citation was coming up, or, "What time
o appear in court," or about matters which
ermane to the criminal [422] matter, which
come along on the following Monday morn-

Richman has been testifying here as to what
n in the past in the operation of the receiver-
a private office out there.

n I submit it is not within the scope of an
authority, to discuss those matters with out-

Court: I think legally it either isn't or we
be cutting it awfully fine, and I don't want
it awfully fine.

course, you should bear in mind that a court
e up the situation, sitting in an impartial
n as the court does, and I think there is
ntirely too much emphasis placed upon this
ontrol violation. Not that smog control isn't
ant and that something should have been
prevent this occurrence. But I don't think
e controlling thing in the evidence here.

Enright: In view of the objection. I would

(Testimony of Frederick I. Richman.)

The Clerk: Defendants' E in evidence.

(The document referred to was marked Defendants' Exhibit E and was received in evidence.)

DEFENDANTS' EXHIBIT E

Air Pollution Control, Inc. Jan. 22,
357 North La Brea Avenue
Los Angeles 36, California
Attention: Mr. B. Manalis

Gentlemen:

This letter will confirm Mr. Harrison's telephone conversation with you on January 15th giving me my instructions to proceed with the construction and installation of your Oxyaire Catalyst project for the incinerator at the Oliver Cromwell Apartment Hotel, 418 South Normandie Avenue, Los Angeles.

As you request, I am attaching the plans you submitted to the Air Pollution Control District and which now carry their approval for construction. The letter from the Air Pollution Control District enclosing the approved plans is committal insofar as final approval is concerned. This, Mr. Harrison also pointed out in its relation to the contract with you for completion and installation of a remedy capable of passing Air Pollution Control District standards as covered and

all be glad to have a report from you as your
on this progresses.

rs very truly,

/s/ Roy E. Hallberg,

iever of the Assets of the former Richman
rust.

nc.

(By Mr. Enright): Directing your attention
ibit B, Mr. Hallberg's memorandum, and to
te January [423] 13th:

ceived notice re: Oliver Cromwell Incinera-
xy-Aire vice president said he would handle
authorities. Urged him to get on our job. Said
gs not received. Harrison to get them au-
r with letter (outlined contents for letter)."
t is at the time of the citation, the criminal
n for the smog violation?

No, I think that is the time of the violation
operation of the incinerator. The notice was
that was given January 13th, the criminal
n came through some days later, when noth-
as done, and the incinerator was still being
ed.

The drawings there referred to, there was
ne set of drawings involved in this transac-
wasn't there? A. That is correct.

So from January 13th to the 22nd they must

(Testimony of Frederick I. Richman.)

Mr. Whyte: I am going to move that answer be stricken for the purpose of making objection to the question.

The question is that between a certain period of time the plans and drawings must have been in the possession of [424] the Receiver.

Mr. Enright: I will withdraw the question. The documents speak for themselves.

Mr. Whyte: There is no basis for this gentleman testifying as to that.

Q. (By Mr. Enright): You did transmit the drawings to the Receiver on or about December 4, 1953?

A. I did.

Q. There was only one set of drawings?

A. That is correct.

Q. Now, directing your attention to Mr. Hallberg, did you have a conversation with him on December 4, 1953, concerning the subject matter of his experience in managing apartment houses?

A. I did.

Q. Can you fix the date of that conversation?

A. December 4, 1953.

Q. Where did that conversation occur?

A. In Mr. Hallberg's automobile.

Q. What was the occasion for your being in the automobile?

A. I was taking Mr. Hallberg to the various apartment buildings and introducing him to the managers.

United States
Court of Appeals
for the Ninth Circuit

FREDERICK I. RICHMAN, Appellant,

vs.

DAVID TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

DAVID TIDWELL, Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

Transcript of Record

In Three Volumes

VOLUME III.

(Pages 649 to 974, inclusive.)



United States
Court of Appeals
for the Ninth Circuit

DERICK I. RICHMAN, Appellant,

vs.

A. TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

A. TIDWELL, Appellant,

vs.

DERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

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In Three Volumes

VOLUME III.

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s from the United States District Court for the Southern
District of California, Central Division

mony of Frederick I. Richman.)

What did Mr. Hallberg say concerning that [425] matter and what did you say concerning that subject matter of his experience in man- apartment buildings?

I asked Mr. Hallberg if he was in the busi- of operating multiple housing. He said yes, he

id, "How big are your houses?"

said he had a 40-unit.

id, "Where?"

said, "On East Colorado."

id, "Pasadena?" He said, "Yes."

id, "What is the name of the building? I at of buying some properties over there once might know it."

You are relating the conversation?

Yes. Mr. Hallberg said, "Well, I am not go- talk any more with you. I have been told not euss myself with you."

I excused the conversation and changed it to ather.

Now, directing your attention to the Western concerning the refrigeration system and the nt of February 17, 1954, did you receive a one call concerning that subject matter?

I did.

From whom? A. Mrs. Kennedy. [426]

She was the witness that previously testified

(Testimony of Frederick I. Richman.)

Q. What was said by that agent of the Rec

Mr. Whyte: Again, just for the purpose of record, I would like to object to this as calling hearsay testimony.

The Court: You dispute she was an agent

Mr. Whyte: No, I don't dispute that, Honor, but again I don't think that her connections with Mr. Richman are within the scope of employment as Mr. Hallberg's agent.

The Court: Whether they were or were not have to be determined somewhat by the nature of the conversation. You might say a lot of things that do not bear upon a particular relationship, and you might say some things of which there is a question whether they do or whether they do not.

It is difficult, without hearing what was said, to determine whether it was pursuant to the authority or was in derogation of it. So the objection is overruled, with the comment the court will have to scrutinize it with a critical eye.

The Witness: Mrs. Kennedy stated she had a bad break in the refrigeration system. That she had tried to get hold of Mr. Hallberg, had tried to get hold of Miss Cosgrove and wasn't successful.

There was gas leaking in the building, and it should [427] be done. And I told Mrs. Kennedy she had no say in the operation of the buildings.

mony of Frederick I. Richman.)

they were producing the rents that kept the going.

l that I thought she was entirely within her, if he had not changed the refrigeration company that had been on previously, or had given her statements as to it to change, for her to call refrigeration company and tell them to do what was necessary to protect the tenants in the and protect the income from the property.

(By Mr. Enright): What day was that?

That was about the 17th of February.

Did you receive another call the following

A. I did.

From whom? A. Mrs. Kennedy.

The substance of that call was what?

She was still unable to get in touch with Mr. Berg or Miss Crogrove. There appeared to be y at the office.

t she had asked for Mr. Harrison, but had told Mr. Harrison was no longer working for receiver. And the matter was still causing considerable trouble and what [428] should she do.

gain repeated I did not want to be in the position of advising her anything, and the only thing er to do—and I thought she would be protected as to carry through with the service company I had formerly used for the trust, and which

(Testimony of Frederick I. Richman.)

Q. Do you know whether or not the agent the Receiver used that service company?

A. They used that service company for a period of time, and then discharged that service company.

The service company called me a couple of times wanting to know what to do. They had been unable to get in touch with Mr. Hallberg or Miss McGrove.

Q. Now, directing your attention to the Oliver Cromwell payment of January 1, 1954, did you receive telephone calls from a Mrs. O'Neal of the Pacific Mortgage Company concerning that same matter of payment? A. I did.

Q. What dates?

A. On January 14, 1954, I received a call relative to the nonpayment of the January 1, '54 payment on the Oliver Cromwell. [429]

Q. That is the payment you testified that she the check cleared on January 18th, is that it?

A. That is correct.

Q. Directing your attention——

A. After receiving that call I endeavored to contact Mr. Hallberg, but could not reach him. I contacted Mr. Harrison, and he stated the check was drawn and was on Mr. Hallberg's desk, waiting for him to come in to sign the check and send it through.

Mr. Whyte: Again I want to move that the

mony of Frederick I. Richman.)

has been no showing she was an agent of the
ver.

Court: If that is in the form of a motion
like, the court will grant it.

Whyte: That is right, it is a motion.

Witness: I received on January 11th a
from Pacific Mortgage of a reminder that
mortgage payment of \$2,027.25 due on 1-1-54
not been paid.

(By Mr. Enright): Is this the notice?

That is the notice.

Enright: We will offer this in evidence, par-
in corroboration of the agent Harrison's state-
that the check was lying on Mr. Hallberg's
that portion of his testimony was not stricken.

Court: Received.

Witness: I called Mr. Harrison after re-
g that notice.

Clerk: Defendants' F in evidence.

(The document referred to was marked De-
ndants' Exhibit F and was received in evi-
ence.)

Witness: Defendants' Exhibit F. And then
ed him again after receiving the telephone
om Mrs. O'Neil on January 14th.

(By Mr. Enright): Directing your attention
Backbone payment back, was there such a

(Testimony of Frederick I. Richman.)

calls concerning the action of the agent or non-action of the agent on that subject matter?

A. I did.

Q. When?

A. The payment was due on the 15th of the month. On December 15th the payment came to my office. I transmitted it to Mr. Hallberg by envelope.

On or about January 7th I received a note from Mrs. Brookshire that the payment had not been received, and that the payment book had not been received, and she requested that it be mailed to her so that they could send in their payment on the next—the 15th of January.

I sent that note to Mr. Hallberg.

Mr. Whyte: I am going to move to strike out all communications, either in the form of notes or otherwise, from Mrs. Brookshire. There is no suggestion she is an agent of the Receiver. Here again is purely hearsay.

The Court: The motion is granted.

Mr. Enright: The offer of the evidence is for the purpose of showing nonaction or failure of the Receiver to perform his duties.

Q. (By Mr. Enright): Do you have the note? I believe that is base evidence. Mr. Richman, do you have the note? Or did you forward that to Mr. Hallberg?

A. Yes. I have the note. I am sorry I mis-

(imony of Frederick I. Richman.)

What did Mr. Harrison say when you talked with him, the agent of the Receiver?

Mr. Harrison stated that Mr. Hallberg had released the return of that book, but he would bring it to Mr. Hallberg's attention the next time he saw Mr. Hallberg, and would send it back to her. That was shortly after January 7, 1954?

Yes.

That pertained to the December 15, 1953 statement? [432]

The Court: On what obligation?

(By Mr. Enright): Could you answer the witness's question?

On a deed of trust that was owned by Richman Trust; trust deed receivable.

Mr. Enright: I will offer in evidence this January 7, 1954——

Mr. Whyte: To which objection is made on the ground that it is hearsay.

The Court: Let me see it. It will be received as a document received in the course of business.

The Clerk: Defendants' G in evidence.

(The document referred to was marked Defendants' Exhibit G and was received in evidence.)

(By Mr. Enright): Now, directing your attention to Arden Farms commission check, particularly Exhibit G, dated December 13, 1953, and

(Testimony of Frederick I. Richman.)

A. The Arden Farms sent through a check five per cent of the milk bill at the Canterbury between the 15th and 20th of each month.

The check was made payable to F. I. Richman individually, because they would not make it payable to the trust. [433]

Mr. Whyte: Just a moment. I am going to object to strike that as a pure conclusion of the witness and move to strike the rest of the testimony, because there is no sufficient foundation laid. I can't say where this information was coming from, or anything of the sort, so I can make a proper objection.

The Court: The motion is granted. I think that is probably a relevant source of inquiry, but we have enough foundation.

I know what you are driving at, Mr. Enright.

Q. (By Mr. Enright): During the period January 1, 1946 to November 30, 1953, did you as agent for the trust have a continuing transaction with Arden Farms?

A. Not from your starting date. From the time of the acquisition of the Canterbury to the end of November I had a continuing transaction with Arden Farms.

Q. When did you acquire, as agent for the trust, the Canterbury?

A. The trust acquired the Canterbury, I believe, it was October 1948.

Q. From that date to November 30, 1953,

mony of Frederick I. Richman.)

For the guests of the Canterbury that de-
to have the milk delivered to their door by
arden delivery, [434] it did.

During that period of time, up to November
53, was there a commission payable to the
on account of milk delivered by Arden to the
bury Apartments?

Whyte: I am going to object to this line
timony as being immaterial and irrelevant.
may have taken place under Mr. Richman's
e, so far as his dealing with Arden Farms is
ned, doesn't seem to me to prove or disprove
sue with respect to the Receiver.

Court: But it might provide a foundation
vidence at a later time. The objection is over-

Witness: I received five per cent of the
us month's bill, a check from them between
th and 20th of each month.

(By Mr. Enright): Had you been receiving
or several months before November 30, 1953?
Ever since the acquisition of the Canterbury.
Now, did you receive a communication from
Farms of any form?

On December 18, 1953, I received a check
Arden Farms in the amount of \$5.69.

What did you do with it?

But it in an envelope and mailed it to Ray

(Testimony of Frederick I. Richman.)

A. On about January 8th I received the back, together with a notation dated 1-7-54:

“Mr. Richman:

“Will you please endorse the Arden check attached and return to me? Thank

“Roy E. Hallberg.”

It was all typewritten; not even signed by Hallberg.

Q. Now, directing your attention to the utility company that furnished you gas service, will you state whether, or, which utility of our Angeles Utilities furnished gas to these five apartment houses?

A. Southern California Gas Company furnished gas to all five buildings.

Q. On or about January 8, 1954, did you receive a communication from the Southern California Gas Company concerning payment of the gas utility bills?

A. I received an audited request at that time from the Gas Company, showing it did not cash a reply or payment, but stated—showing that on the account, the bill for the period ended December 14th of \$81.78 was still outstanding.

Q. That is as of January 8, 1954?

A. That is correct. I contacted Mr. Hallberg and verified it, and did not send it through, because

mony of Frederick I. Richman.)

from the Gas Company for the Canterbury for
period December 14th to January 14th in the
t of \$89.39, and showing that the bill for the
from November 12th to December 14th, in
amount of \$81.78 was still unpaid, making a
amount due of \$171.17 as of January 21, 1954.
Now, directing your attention to the power
ater utilities, did you receive communications
those concerning the Receiver's incurring or
curring those bills? A. I did.

Recite the dates.

January 15, 1954, the water, light and power
r the Oliver Cromwell, for the period of De-
r 7th to January 7th, was received by me.
ansmitted it to Mr. Hallberg, and attached to
a sticker, "Your previous bill may have been
oked. Please give this statement your prompt
on."

, I had received a gas bill for the Fountain
r for the period December 7th to January 7th
amount of \$207.45, showing the bill for the
November 4th to December 7th, in the
t of \$199.66 was still unpaid; for a total of
1.

That is as of January 15, 1954? [437]

Yes.

Those are utilities as of November, which
yet unpaid? A. Yes

(Testimony of Frederick I. Richman.)

bills for the LaLoma, for the period as of January 11, 1954, and both bills—that is, the house bill the manager's phone showed that the December 1953, phone bill of both the manager and the was unpaid.

The manager's phone was \$4.40 for the current month, and the previous unpaid month was

The house phone was \$8.31 for the current month and \$6.33 for the previous month, which had been paid.

The utility bills and phone bills were all in my name, and I received numerous calls from relatives relative to non—from the utility companies relative to the nonpayment of the bills.

The Receiver evidently made no attempt to transfer the service into his name as Receiver.

Q. Directing your attention to Barker Brothers, do you receive a notice from them sometime in January 1954? A. I did, January 18, 1954.

Q. What was that bill for and for what period of time? [438]

A. The bill was for—the notice was for \$60 relative to purchases made in November, and that was one of the bills I had delivered to Mr. Hallock as being unpaid when he took over the operation of the trust, about December 1, 1953.

Q. Did your previous testimony cover the Berkeley gas bills? I guess it did, didn't it?

A. Yes, but on January 26, 1954, I received

imony of Frederick I. Richman.)

the bill, in the amount of \$278.44 being unpaid.

I will direct your attention to compensation
insurance policy. Did you receive a request upon
this item? A. I did.

What date?

I received the blank statement to put on the
figures about December 28, 1953. I sent that
to Mr. Hallberg, with the request that he put on
figures for the trust for the period of October
and November 1953.

and then I would send it to the company, and
I would be able to compute the amount of the
insurance deposit premium which goes to the trust
and would repay the trust with.

The Receiver had then taken possession of
the books and records for the months of October
and November, is [439] that right?

That is correct. I didn't have any informa-
tion relative to the amount of payroll for Novem-
ber and October, which I needed for that audit.

Did you receive a reply from the Receiver?

I did not. On January 22nd I received a
request from the insurance company. I
submitted that and talked with Mr. Harrison.

He stated that he would try to get it out as
early as he could, but he would have to discuss
it with Mr. Hallberg, and he didn't see Mr. Hallberg

(Testimony of Frederick I. Richman.)

of \$400.00 on account of compensation insurance
do you have that subject matter in mind?

A. Yes.

Q. There is such an item shown?

A. Yes, the compensation insurance companies
require a premium deposit. In this instance
\$400.00, to write the policy, so the receiver's books
reflect—and I was present when he ordered
policy from Mr. Dulley, and was told it would
\$400.00 deposit premium on the compensation
policy, which he had to take out in his name
Receiver.

Q. Does the Receiver's accounting in any manner
account for the refund, if any, or disposition
that \$400.00 item, other [440] than being a charge?

Mr. Whyte: I object to that. The Receiver's
account is the best evidence and will speak for itself.

The Witness: There is nothing in the Receiver's
account showing any audit on that compensation
or any return premium on that.

The Court: They seem to be going along with
your objection, Mr. Whyte; Receiver's account.

Q. (By Mr. Enright): Have you examined
account? A. I have.

Q. Is there any place in here where there
been a refund or an accounting in any manner
the \$400.00? A. There has not.

Q. Are you familiar with the payroll incurred
by the Receiver while he was in possession of

imony of Frederick I. Richman.)

payroll during comparable periods of time, back so far as January 1, 1946, for example?

Whyte: Miss Reporter, will you read the question? I didn't catch it.

(The question was read.)

Whyte: What payroll is that?

Enright: The payroll for which Mr. Hall deposited \$400.00. [441]

Whyte: I understood that \$400.00 to be an advance deposit. I don't quite catch the connection.

Enright: Compensation insurance.

The Court: I think they are proving the payment of premium for workmen's compensation coverage for employees of the trust.

Is that right?

Enright: That is correct, your Honor.

The Court: What is the point you are making, Mr. Whyte can get it?

Enright: I am endeavoring to introduce the evidence which will demonstrate there has been no payment or settlement of the account by the Receiver, first.

And, second, we will produce evidence there is approximately \$150.00 refundable on account of the \$400.00 deposit; another action or nonaction on the part of the Receiver.

(Testimony of Frederick I. Richman.)

the same time, we are interested in any change made along the line of refund.

I think we should be fair to the Receiver. I called him in here one morning and said, "Plaintiff and defendant have reached an agreement. Plaintiff give over possession this [442] week end. And the order specifically states you turn over everything to Mrs. Tidwell and her agents, other than cash in bank and under your control."

Now, at that time, I will stipulate for the purposes of this argument, that the Receiver had used up the whole \$400.00 he had been paid—the Receiver had not used up the whole \$400.00 he had paid in this five-month period.

Now, we have made an agreement. We bought out the assets of the trust as of March 1st.

Now, if they have any complaints on that, that is against us. That is something that can be dealt with us.

We can't just kick a Receiver out over a week end and then say, "You failed to make an accounting of any moneys that hadn't been used up."

The point is he paid the money out and he set it in his accounting. I think the matter speaks for itself.

If they think, Defendant Richman thinks Plaintiff is entitled to any of this money, that is something for the plaintiff and defendant to fight out in

mony of Frederick I. Richman.)

not jeopardize anyone's rights, and will save time.

Court: Well, I rather gather from the line of testimony that Mr. Enright is endeavoring to establish the practice by the Receiver. Is that right?

Enright: That is one point. [443]

Court: To that end the door has to be left open to receive testimony which might be relevant in that field, whether it does or does not prove the alleged accusations, so the objection will be overruled.

(By Mr. Enright): My desire, Mr. Richman, is to ascertain now whether or not you have made a statement, based upon your experience, as you previously testified, as to the amount of money received under this \$400.00. A. I have.

What is the amount?

The compensation policies run differently from others.

Whyte: I am going to object to this. There is no sufficient foundation laid for his knowing all the facts which will indicate——

Court: Objection sustained. No proper foundation.

Whyte: ——what the amount will be.

(By Mr. Enright): Did you examine the books and records of the Receiver? A. Yes.

Did you examine his accounts?

(Testimony of Frederick I. Richman.)

A. I have; it is in his report. [444]

Q. Did you examine to ascertain the charges for workmen's compensation insurance?

A. I have.

Q. State the amount that accrued.

A. The amount accrued——

Mr. Camusi: I object to that on the ground that it is still not the best evidence. I don't want this evidence coming in. I want to see the relevant records.

The Court: Objection sustained.

Mr. Enright: You want to see the records.

Q. (By Mr. Enright): Will you get the records, Mr. Richman?

The Witness: Do you want to take a recess? The Court is going to take me some time to dig them out.

The Court: All right. We will recess until the witness finds the records.

(Short recess taken.)

Mr. Whyte: Your Honor, I wonder if I may have permission to ask Mr. Richman a few questions on voir dire, with respect to this and so-called insurance refund.

I think I can show it has no materiality here. I can be permitted to ask the witness a question or two.

The Court: All right. Go ahead. [445]

mony of Frederick I. Richman.)

refund from an insurance company on account of compensation insurance, is that correct, sir?

Not a refund of \$400.00.

How much was the refund?

I figure the refund should be in the neighborhood of \$158.00.

Is that the item which you said was not in the Receiver's report?

That is correct.

When did that refund—when was that item added to the Receiver, if you know?

I don't know whether it has been refunded. It could be refunded until the Receiver filed his final figures for the three months of his operation. The company computed the amount of pre-refund upon his payroll figures, and then he would make a refund.

You say you don't know whether it has been refunded or not?

No. It does not show in his report at all.

If it had not been refunded, naturally, it would not show in the Receiver's report, would it?

That is correct, but it is an amount that should belong to the Receiver. It was money deposited there, that hasn't been used up and is refundable to the Receiver.

The \$400.00 deposit does show on his books, as

(Testimony of Frederick I. Richman.)

roughly December 1, '53, to February 28, 1954, you not? A. That is correct.

Q. Then any transactions occurring outside that period would not be shown in the Receiver's report, would they?

A. No, the Receiver's report also shows checks dated March 8, 1954, after the period of the report.

Q. You refer to the many checks which are shown in the Receiver's report. Will you direct attention to those, please, Mr. Richman?

A. Yes. They are on Exhibit C, "Disbursements Made by the Receiver, as Directed by the Court, Covering Liabilities Incurred Prior to February 28, 1954, but not Paid Until After that Date," and it is three pages of them.

And then the recapitulation at the bottom of page 3 shows the amounts according to the 12 months operation of \$26,819.19.

The payments as listed above of \$6,121.40, that means [447] the payments which were made after February 28, 1954.

Then it shows the balance as of March 10, 1954, of \$20,697.71.

Q. Schedule C you have referred to is limited to disbursements made on account of liabilities incurred during the month of February 1954, is it not, Mr. Richman?

A. That is what it is, but there are

mony of Frederick I. Richman.)

Yes. The insurance premium was due and payable for the period of time of the three months' term, subject to an audit.

Do I understand you correctly as telling me that when the receivership or successors to the Receiver have a refund coming from the insurance company, that that is a liability which they have incurred?

No, not a liability they incurred, but their obligation for compensation insurance for the three months' period of time is a liability they have incurred in the receivership.

Whyte: I think I have developed sufficiently to show your Honor that the omission of any reference from Mr. Hallberg's report is completely explainable upon the ground it wasn't received during the period which the report covers and, in fact, the witness doesn't even know it yet has been received.

The Court: Treating that as an objection, the objection is sustained. Now, it would be proper to ask that, if it be the fact, that the Receiver was entitled to a refund, that the Receiver did not apply for the refund.

That under the contract or the rights as fixed by the time within which the refund could be obtained has expired.

(Testimony of Frederick I. Richman.)

Mr. Camusi: I would like the record to state objection perhaps a little different way.

The Court: To what are you going to object question?

Mr. Camusi: The whole line.

The Court: The court's ruling or what?

Mr. Camusi: The whole line of questioning, Honor. I don't think they can make out a case on the bare facts in this case, because this court ordered by your Honor that Friday morning, you directed the turning over of the assets to the plaintiff Mrs. Tidwell on Sunday afternoon, said assets.

This potential refund at that time was an asset. It was turned over to Mrs. Tidwell.

If they think they have some interest in that, is [449] something we will fight out on our own. It is our position they haven't.

The Court: Let's mark that down as one issue to be considered in the pretrial that is coming up.

Mr. Camusi: That is right. You can't come in and attack the Receiver for not having collected this. We wouldn't have permitted it, because, under the order of court and our stipulation with the defendant Frederick Richman, it was conceded on all points that all assets, except money in the bank or under the control of Receiver at that time, were turned over to the plaintiff and they were to

imony of Frederick I. Richman.)

it could come back would be to Mr. Hallberg.
policy is in Mr. Hallberg's name.

e Court: His statement doesn't call for a
ment from you. There was no question for you
like a statement to.

. Enright: The amount of \$125.00—

. Camusi: I will stipulate, to save time—we
n the process of checking that—if Defendant
man thinks he has any right to it, that refund,
ll have ample opportunity to make that claim
s fight with us.

e Court: That is where I think we should
der it, instead of considering it with this Re-
c, who was subject to an order. [450]

e Witness: That check will come back in the
of the Receiver and will be endorsed by him
to you and your client, or he will send an
rization to the company to give it to you, ac-
ng to the insurance rules. Otherwise, it will
directly back to the policyholder, who is Mr.
berg.

(By Mr. Enright): Mr. Richman, have you
ined the books and records and correspondence
e Receiver?

To a certain extent, yes.

Did you find anything in there anywhere
ining to the Receiver making an application

(Testimony of Frederick I. Richman.)

There is no foundation laid here to show under what circumstances the Receiver would have made an application. I don't see the materiality.

The Court: He can only ask one thing at a time. Objection overruled.

I do think, Mr. Enright, this could be put in evidence between Mrs. Tidwell and Mr. Richman, rather than on this fixing of a Receiver's compensation. [

Mr. Enright: I bring it out at this time, Your Honor, primarily in response to the conclusion that the Receiver he was so experienced in this field had conducted this business so efficiently. He is a fine example, in my opinion, at least, as to the nature of his activities.

Q. (By Mr. Enright): You did go over all the books and records and found no application of any kind pertaining to refund for workmen's compensation insurance? A. That is correct.

Q. That will be a matter of auditing, I suppose. Now, directing your attention to public liability insurance, and particularly Mr. Hallberg's testimony that the public liability insurance insured the property, as distinguished from property of the trust.

Did you examine the records pertaining to that insurance? A. I did.

Q. Was there any of your property covered by that insurance? A. There was not.

mony of Frederick I. Richman.)

Just I had sent out for the payment of the sum on there, and then at a subsequent time he gave me a check, No. 207, dated [452] January 10, 1953, to Robert H. Dulley Company, for \$3,827.66, marked in the voucher part "12-1-53. CL for \$3,427.66." That is the amount of the liability policy.

There is also "12-2-53, C—" which stands for commission—" \$480.00, 12912."

There was the \$400.00 deposit on the commission policy, which he took out for himself.

The check bears the stamp of Union Bank perfect, as having been paid on 1-18-54.

The public liability policy was not rewritten in 1954. It was the identical policy that Mr. Dulley submitted to me and which I turned over to the Receiver on, I believe, December 4, 1953.

Now, directing your attention to the subject of fiduciary income tax return, and particularly to Mr. Hallberg's testimony he had two conferences at the Revenue Department, on how to prepare that return or in connection with the return, you receive a statement from the Receiver as to the amount of moneys that had to be received by the beneficiary and had been received by the trustee as a beneficiary?

(Testimony of Frederick I. Richman.)

Q. Did you locate the copy of the fiducial turn [453] prepared by the Receiver?

A. Yes, I have in the record, since no copy ever sent to me for my information.

Q. May we have it at this time and have it marked for identification? A. Yes.

Mr. Enright: May this be marked next in evidence for identification?

I would like to offer it in evidence, if there is no objection.

Mr. Whyte: No.

The Court: Received.

The Clerk: Defendants' H in evidence.

(The document referred to was marked as Defendants' Exhibit H and was received in evidence.)

DEFENDANTS' EXHIBIT H

U. S. FIDUCIARY INCOME TAX RETURN

(FOR ESTATES AND TRUSTS)
For Calendar Year 1953

1953

 1941
Department
and Service
or taxable year beginning Jan. 1, 1953, and ending January 1, 1954

(PRINT NAMES AND ADDRESS PLAINLY BELOW)

 Name of
Estate or Trust Trust of J. L. Callberg, dec'd
CHECK (✓) WHETHER ESTATE ☐ OR TRUST ☒ as of Dec. 1, 1953

 Name and
Address of
Fiduciary
William F. Johnson
117 South Hill Street
Los Angeles 12, California

Do not write in these spaces

Serial
No.

(Cashier's Stamp)

INCOME

Income from bank deposits, notes, corporation bonds, etc. (except interest reported in item 3).....	\$	125.00
Income from tax-free covenant bonds upon which a Federal income tax paid at source.....		
Income from Government obligations, etc., unless wholly exempt from tax from partnerships, and other fiduciaries (from Schedule A).....		
Income from royalties (from Schedule B).....	90,796.13	
Gain (or loss) from sale or exchange of capital assets (from Schedule C).....		
Gain (or loss) from sale or exchange of property other than capital assets (from Schedule D).....		
Gain (or loss) from trade or business. (Attach statement).....	3.76	
Income. (State nature of income) <u>Ordinary income, interest, dividends, etc.</u>		
Total income in items 1 to 9.....	\$	90,921.13

DEDUCTIONS

(Explain in Schedule F).....	\$	
(Explain in Schedule F).....		
Deductions authorized by law. (Explain in Schedule F).....	36,856.89	
Total deductions in items 11 to 13.....	\$	36,856.89
(item 10 less item 14).....	\$	54,064.24
Amount distributable to beneficiaries (total of columns 3 and 4, Schedule G).....		54,064.24
Amount taxable to fiduciary (item 15 less item 16).....	\$	one

COMPUTATION OF TAX FOR CALENDAR YEAR 1953

(For Other Taxable Years Attach Form 1041FY)

Income (item 17, above).....	\$	one
Exemption (\$600 for an estate; \$100 for a trust).....		100.00
(item 18 less item 19).....	\$	one
Amount in item 20. See Tax Rate Schedule in Instruction 21. (If item 18 includes fully tax-exempt interest, see Instruction 21).....	\$	one
Alternative tax computation is made, enter tax from line 23, Schedule C.....	\$	one
Fiduciary's share of income tax paid to a foreign country or U. S. government (Attach Form 114).....		one

Defendants' Exhibit H—(Continued)

FOREIGN LIFE AND TRUST COMPANIES

RECONCILIATION OF INCOME

December 31, 1953

Income from Properties (See Attached Schedule)	\$90,796.13
Income earned	126.44
Other Income (See footnote)	<u>1.86</u>
Gross Income	\$90,926.43

Insurance Expense	\$ 459.99
Compensation	\$ 713.13
Liability	<u>787.76</u> 1,500.89
Management Fee	\$ 34,429.63
Salaries	475.00
Payroll Taxes	<u>21.38</u> 34,926.01

Total Expenses	<u>36,886.89</u>
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Net Income	<u>\$54,039.54</u>
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Excess payroll
allocations in 1953.

1953:

W. Tidwell	\$ 19,887.51	
Rich I. Richman	<u>19,887.50</u>	\$39,775.01
Allocated Income		<u>14,264.53</u>
		<u>\$54,039.54</u>

Income	\$ 101,271.44	\$ 90,274.22	\$ 22,165.92	\$ 91,961.66	\$ 53,880.01	\$ 274,752.38
Less:						
Depreciation	\$ 27,882.97	\$ 17,576.14	\$ 10,111.57	\$ 25,731.72	\$ 10,440.21	\$ 91,742.61
Interest & Taxes	\$ 5,821.19	\$ 7,566.32	\$ 2,654.30	\$ 6,312.63	\$ 5,347.84	\$ 32,742.28
Insurance	\$ 669.34	\$ 645.27	\$ 196.22	\$ 1,378.89	\$ 177.60	\$ 3,070.32
Interest				\$ 9,002.53		\$ 9,002.53
Cost of Repairs	\$ 6,455.51	\$ 6,719.44	\$ 2,937.72	\$ 5,904.37	\$ 4,653.66	\$ 26,670.70
Utilities	\$ 7,955.12	\$ 8,597.75	\$ 2,719.73	\$ 6,001.32	\$ 3,741.82	\$ 31,018.77
Salary	\$ 3,895.57	\$ 3,547.37	\$ 1,017.11	\$ 3,040.15	\$ 1,833.27	\$ 13,333.47
Salaries	\$ 20,224.63	\$ 19,644.87	\$ 3,705.36	\$ 19,168.13	\$ 8,223.21	\$ 70,965.20
Roll Taxes	\$ 592.75	\$ 584.02	\$ 166.74	\$ 962.55	\$ 373.13	\$ 3,176.22
Cellaneous	\$ 2,202.52	\$ 462.72	\$ 53.50	\$ 1,152.12	\$ 244.96	\$ 4,194.88
General Expenses	\$ 79,015.69	\$ 65,644.92	\$ 23,597.25	\$ 82,557.41	\$ 35,104.70	\$ 285,919.98
Operating Profit	\$ 24,255.75	\$ 24,629.29	\$ 8,767.80	\$ 9,404.25	\$ 23,775.31	\$ 90,532.40
Less:						
Taxes--Mern Co. Acres				2.93		
" --Sedera County				18.14		
" --San Bernardino Acres				15.30		
Net Income from Properties						\$ 90,796.13

Acquired	Improvement	Depreciation	Cost	Life	Yrs.	12 5/12 Yrs.	16 2/3 Yrs.	12 5/12 Yrs.	16 2/3 Yrs.	Depreciation
Hotel										
10-1-48	\$ 347,733.05	\$ 88,671.15	\$ 259,061.90	16 2/3	Yrs.	12 5/12	16 2/3	12 5/12	16 2/3	\$ 16,647.72
10-1-48	35,000.00	17,850.00	17,150.00	8 1/3	"	4 1/12	8 1/3	4 1/12	8 1/3	4,200.00
Var. 1950-1-2-3	32,011.92	8,190.76	23,821.16	4 1/6	"	Various	4 1/6	Various	4 1/6	7,035.25
Hotel										
1-15-44	178,359.98	77,890.42	100,469.56	20	"	11	20	"	20	6,809.24
1-15-44)										
9-25-48)	38,589.55	36,830.90	1,758.65	8 1/3	"	4 1/12	8 1/3	"	8 1/3	430.80
Var. 1950-1-2-3	48,295.68	14,025.41	34,270.27	4 1/6	"	Various	4 1/6	Various	4 1/6	10,081.64
1-15-44	6,666.67	2,985.01	3,681.66	20	"	11	20	"	20	254.46
Hotel										
5-20-49	140,000.00	30,100.00	109,900.00	16 2/3	"	13 1/12	16 2/3	"	16 2/3	6,842.52
5-20-49	10,000.00	4,300.00	5,700.00	8 1/3	"	4 3/4	8 1/3	"	8 1/3	1,200.00
Var. 1950-1-2-3	8,155.34	2,668.88	5,486.46	4 1/6	"	Various	4 1/6	Various	4 1/6	2,069.05
Hotel										
9-1-50	315,051.18	44,107.00	270,944.18	16 2/3	"	14 1/3	16 2/3	"	16 2/3	15,988.80
9-1-50	35,000.00	9,800.00	25,200.00	8 1/3	"	6	8 1/3	"	8 1/3	4,200.00
Var. 1950-1-2-3	25,956.09	6,687.23	19,268.86	4 1/6	"	Various	4 1/6	Various	4 1/6	5,542.92
Hotel										
5-7-41	121,014.48	56,489.70	64,524.78	25	"	13 1/3	25	"	25	3,973.56
Var. 1950-1-2-3	28,863.11	8,470.05	20,393.06	4 1/6	"	Various	4 1/6	Various	4 1/6	6,466.65
	\$ 1,370,697.05	\$ 409,066.51	\$ 961,630.54							\$ 91,742.61

Defendants' Exhibit H--(Continued)

Page 4

BENEFICIARIES' SHARES OF INCOME AND CREDITS. (Include as beneficiaries persons to whom amounts were paid or set aside for religious, charitable, etc., purposes.) (See Instructions 4 and 14)

1. Address of each beneficiary as charitable organization, or resident alien, if any	2. If return is for a trust, state relationship of grantor to each individual beneficiary	3. Taxable income less any partially tax-exempt interest included in Item 4, page 1	4. Partially tax-exempt interest included in Item 4, page 1	5. Federal income tax paid at source (2% of Item 3, page 1, less Item 24, page 1)	6. Income and profits taxes paid to a foreign country or United States possession
1. Sidwell	same	\$ 27,019.72	\$	\$	\$
2. same	same	27,019.72			
3. same					
4. same					
5. same					
6. same					
7. same					
8. same					
9. same					
10. same					
11. same					
12. same					
13. same					
Totals.....	xxxxxxx	\$ 54,039.51	\$	\$	\$

QUESTIONS

1. Income tax return filed for the preceding year? ☒ Yes, to which District Director's office was it filed? San Francisco
2. If estate or trust was created on 1-1-1915, of will or trust instrument and statement required by General Instruction I have been previously filed, state when and where filed overseas
3. Whether this return was prepared on the cash ☐ or ☐ accrual basis.
4. If estate or trust at any time during the taxable year directly or indirectly any stock of a foreign corporation or of a personal holding company as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No. If answer is "Yes," attach list showing name and address of each such corporation and amount of stockholdings.
5. If return is for a trust, state name and address of grantor same as beneficiaries
6. If return is for an estate, has a United States Estate Tax Return been filed? (Answer "Yes" or "No") No. If answer is "No," will such a return be filed? "Yes" ☐ "No" ☐ "Uncertain" ☐ (Check which.)

DECLARATION (See Instruction F)

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been prepared by me, and to the best of my knowledge and belief, is a true, correct, and complete return.

Prepared by: Person (other than taxpayer or agent) preparing return (Date) 3-25-51 (Signature of fiduciary or officer representing fiduciary) (Date)

(Name of firm or employer, if any)

(Address of fiduciary or officer)

mony of Frederick I. Richman.)

Court: At this point, counsel, we will recess
case for a few minutes while I take up another
r on our calendar, but which shouldn't require
much time. I had planned to take the after-
recess at this time, although we took it earlier.
(Whereupon, other court matters were
heard.)

(By Mr. Enright): Directing your attention
hibit H, the income tax return, does it reflect
elf as one of the beneficiaries, as receiving the
e for November and December 1953? [454]

It does.

Did you receive the income?

I did not.

Was any portion of that money, that is, No-
er's collections, taken off by the Receiver on
umber 1st?

e Union Bank, the December collections are
a part of this fund accounted for in the Re-
's accounting, is that right?

That is correct. The fiduciary return

Whyte: Objected to. There is no question
ng.

Court: Do you desire to further explain
answer, Mr. Richman?

e Witness: I do.

(By Mr. Enright): Proceed

(Testimony of Frederick I. Richman.)

in fact, I only received from the Richman trust for the year 1953 the sum of \$19,887.50.

The figure which I used on my individual income tax return was \$19,887.50, because I am a cash basis taxpayer.

But the figure the Internal Revenue, Direct Tax, Internal Revenue will be checking on will be the figure of \$27,019.72. I can expect an audit as a result of this return.

Mr. Whyte: Now, I am going to object to the line of [455] testimony and ask that this be stricken upon the ground there is no showing of materiality. There is no showing these papers are, that the Receiver has prepared the return in any manner that was improper or otherwise in violation of the instructions and conversations with the employees of the Director of Internal Revenue.

The Court: The answer is in. The objection comes too late, so the answer will stand. I deem the line of inquiry irrelevant, so it should not be pursued further.

Mr. Enright: The relevancy, in my opinion, to your Honor, was the fact that the Receiver testified on direct that he had rendered services in preparing an income tax return.

The Court: Another question.

Q. (By Mr. Enright): Now, directing your attention to the subject of surcharges, does the

mony of Frederick I. Richman.)

Whyte: Won't the report speak for itself
your Honor?

Court: Yes, it will. I take it this is only to
be a line of inquiry and to pinpoint it.

Witness: The Receiver's report shows that
he took over he was chargeable with \$785.00,
of February 28, 1954, there is no accounting
e \$785.00.

(By Mr. Enright): Did you make a compu-
of the [456] rents collected by the managers
e month of February, as to the total amount
ts collected? A. I did.

How did that amount compare with, or what
he difference, if any, between that amount,
by the Receiver for the month of February?

The managers show they collected—

Do you know the net difference, Mr. Rich-

A. \$1,290.59.

That is, the collections for February 26th,
28th? A. That is correct.

Court: How much?

Witness: \$1,290.59.

(By Mr. Enright): For what period?

Well, it is the amount that is necessary to
ce the amount shown, that the managers of
dividual buildings collected for the month of
ary, with the amount shown in the Receiver's

(Testimony of Frederick I. Richman.)

his report. A difference of \$752.28, which was available for his collection on February 28, 1954.

The Western Arms, the manager's report \$4,724.25 [457] available to the Receiver for month of February 1954, but the Receiver took from her \$4,185.94, leaving a balance \$538.31, which the Receiver could have collected February 28, 1954. Or a total——

Mr. Whyte: As to both statements made by Richman, that the Receiver could have collected such and such a date, I am going to move the stricken; pure conclusion on his part and no foundation laid whatever.

The Witness: Mr. Camusi and Mr. Udall collected them on February 28, 1954.

Mr. Whyte: I will accept that statement, Richman.

Mr. Camusi: I won't. I don't know it is truth. It is not the best evidence and I object that ground and ask it be stricken.

The Court: Sustained; granted.

Mr. Enright: Well, I am merely accumulating the evidence here at this time. It is in the deposition of Mr. Hallberg and it is in evidence already.

The Court: Apparently, this is part of the counting between Mrs. Tidwell and Mr. Richman and the figures, I take it, will not be in dispute. They are the result of an audit on which auditors

imony of Frederick I. Richman.)

Enright: I would merely point out the court [458] was that the Receiver retain moneys in his control, the order of February 26, 1954; as an item of \$1,290.59 that he did not retain. I am concluding the evidence on the point. Whether it is relevant or not, I can only state what court order was.

(By Mr. Enright): The net difference was \$1,290.59? A. That is correct.

Oliver Cromwell was \$2,027.25?

That is correct.

You seek those surcharges against the Receiver in this proceeding? A. I do.

Or that they be a charge against the plaintiff in this action?

They should be taken into account in this proceeding.

The Court: We are going to try the case as between the plaintiff and defendant at a later time, as to what shall be done with these moneys.

I will keep under submission this matter of the accounting of the Receiver's account and fixing his compensation until that other matter is decided.

Enright: Thank you, your Honor. That is favorable to our side. We merely want the moneys taken into consideration.

Whyte: I would like to inquire of the court

(Testimony of Frederick I. Richman.)

surcharge to the Receiver personally for any these claimed items.

Now, is that correct, Mr. Enright?

The Court: I understand Mr. Enright is seen to charge the fund which is in the Receiver's session.

Mr. Whyte: Very well.

The Court: Is that right, Mr. Enright?

Mr. Enright: Yes.

Q. (By Mr. Enright): And in the same category as the \$2,027.25, Oliver Cromwell payment?

A. Yes.

Q. Now, directing your attention to the subject matter of your November fees under the trust agreement, terminated by the decision of November 30, 1953, did you have a conversation with the Receiver concerning the amount of your fees, the payment of your fees? A. I did.

Q. Does the Receiver account for your fees being an obligation of the trust in the amount of \$3,104.33? A. The report so shows.

Q. State the conversation you had with the Receiver.

A. The first conversation was when Mr. Whyte was [460] present, December 3rd, in my office I mentioned the fact I would be entitled to fees.

Mr. Camusi: I object on the ground of hearsay. Plaintiff's Exhibit 10 is a letter from the Receiver to the Plaintiff dated December 3rd, 1953, in which the Receiver states that the Plaintiff is entitled to fees for the month of November, 1953, in the amount of \$3,104.33. This is a hearsay statement and is not admissible.

mony of Frederick I. Richman.)

e Court: I take it that no one claims the
ever paid his fees?

Camusi: We can stipulate——

e Court: Since it is not money paid out by
receiver, and if it is allowed should be allowed
st the fund, and that litigation is to be taken
re on the 18th, we ought to defer inquiry until
time.

e Witness: Other than the statement that the
ever made, it had never been mentioned to him.

e Court: What difference does it make? What
ence does it make if you had a big fight about
f you negotiated about it. I don't see it makes
ifference. You either have it coming from the
or you don't.

d since all counsel are here, I might mention
tative thought I have upon that, so that you
deal with it in your research and be prepared
scuss it at the time of the trial.

seems to me that the judgment in the principal
wiped out the contract, that is, it was a void-
contract [461] and it was voided by that judg-

efore, Mr. Richman is not entitled to the
as contracted, but it is obvious from the evi-
e which we have had before that he rendered
ces, that he was the trustee during this period

(Testimony of Frederick I. Richman.)

heads are shaking no one agrees with what I have said—you can argue it fully on the 18th; or you would be more convincing, show me authority one way or the other.

Q. (By Mr. Enright): State the conversation you had with Mr. Enright and Mr. Hallberg on that subject matter.

Mr. Enright: Rebuttal testimony. These gentlemen have claimed they rendered services here, I would like to have the evidence completed on the rendition of their services. That is the object of this testimony.

Mr. Whyte: Objected to as immaterial.

The Court: What services are they going to be paid for on arguing about something which is not part of their business? I am not going to allow any time for discussions about this subject.

Mr. Enright: To Mr. Whyte or Mr. Hallberg.

The Court: No.

Mr. Enright: I will not pursue it further today.

Q. (By Mr. Enright): Now, directing your attention to the testimony of Mr. Mann, the hypothetical question, stating 406 apartments. How many apartments were there, in fact? A. 409.

Q. And the same question pertaining to Mr. Hallberg's testimony as to how many apartments he was managing. A. 409.

Q. He testified 406. Have you examined the owner's records pertaining to his claim of 409?

mony of Frederick I. Richman.)

, as a part of his services, a system of filing
ls? A. I do.

What did you find in his records pertaining
filing of the bill, for example, covering three
r apartment houses for services or materials
hed?

I couldn't find them. Billings for the indi-
houses were in individual piles. The others
just in hodge-podge in another file.

Do you recollect his testimony that he set up
em to determine each house's expenses each
? A. I do.

Do you have his bookkeeping record here or
ents he set up?

I have the Receiver's books here. [463]

Point out the accounting, if you can, show-
e expenses per house for each month.

The Receiver has endeavored to set up col-
in the book for the individual houses, as far
individual expenses are concerned, against that
ular house.

ever, he has not followed through with it
e records as shown would not give the indi-
expenses of the individual houses in com-
detail.

Will you refer to each sheet, so there will

(Testimony of Frederick I. Richman.)

show, but as to his conclusion that they do or do certain things, I don't think it is permissible.

The Court: Is this book in evidence?

Q. (By Mr. Enright): What do you have before you?

A. I have what purports to be the general ledger of the Receiver.

The Court: It ought to be in evidence. It is, and since it will be in evidence before we get through here, I will examine it and determine how much of Mr. Richman's testimony is conclusion and how much is simply orientation of the court to the document. So the motion to strike is denied. [

Q. (By Mr. Enright): Proceed, Mr. Richman.

A. The Receiver lists a petty cash fund and provides the amount of \$785.00 between the five houses as of February 28, 1954, and the prepaid insurance is not segregated to the individual houses, which would be an item to give the expense of the insurance for individual houses.

There are numerous pages in the books which merely set forth a title, with no entries on the page at all. There is one "Inventory." There is another page, "Investments."

"Real Estate Control" is not broken down to give what the individual building is carried at.

Mr. Whyte: I am going——

The Witness: Neither is the reserve for depreciation.

mony of Frederick I. Richman.)
ony, in answering, whereby the witness at-
s to pick holes and flaws in the method of
g these books, upon several grounds.
the first place, this man hasn't been qualified
expert, a CPA, who is able to tell us whether
these books are set up in a proper manner.
foundation has been laid as to his qualifica-
to state whether or not Mr. Hallberg's method
bookkeeping is improper or wrong in any de-
[465]

Enright: May I be heard?

Court: We have had before us, in the prin-
cipal of the case, considerable evidence of Mr.
Richman's keeping books on the particular prop-
erty over a long period of time.

Enright, although he is not qualified to testify as
a public accountant would be, that he is qualified
to testify from his own experience in the handling
of these properties, that a particular subject either
was or was not treated in the books.

Whyte: Well then, my second objection, pre-
sented to the court has overruled the first one, is what
the witness testifying to here, again, is just his conclusion
that he draws from entries or omissions of entries
in these books. It seems to me that is the court's pro-
cedure and not Mr. Richman's.

Court: It is the court's, but the court wants
to be fully advised on a matter of judging the story.

(Testimony of Frederick I. Richman.)

is broken out, as far as the value of the five individual buildings are concerned.

The research for the depreciation of furniture and fixtures is broken out to give the value against each of the five individual buildings—the furniture in each of the five individual buildings. [466]

The improvements is broken out into the five buildings. The question of the account of supplies is not broken out to the five buildings, but there is a notation to F.M. and W.A., which would mean evidently, those supplies went to the Four Manors and the Western Arms.

The unemployment insurance premium sheet has columns headed up for the five buildings, but there is not a figure on that page.

The prepaid taxes have columns headed up for the five buildings, but there is not a figure on that page.

There is a sheet entitled "Utility Deposits," without a figure on the page.

There is a sheet entitled "Deposits, W.C.," which means workmen's compensation insurance, but the credits do not add up to the credit balance shown in the balance column. So it would be impossible to attempt to balance these books, without considerable work on them.

There is a sheet "Advance on Conditional Contracts," without any writing on that page.

There is a sheet of "Note and Accounts Receivable"

mony of Frederick I. Richman.)

There is a sheet "Accounts Payable," with columns for the five buildings, headed up, but not a column on that sheet.

There is a sheet "Notes, Short Term," and not a [467] on that page.

There is a sheet "Accrued Payroll," with columns headed up for the five buildings; there is not a column on that page.

There is a sheet of "I.C.A.," which is the employees'—which is the Social Security. That is broken out to the five buildings, as well as the office, which will give the amount of expense attributable to the Social Security for the employees of each building.

The same is relative to the sheet marked "State Unemployment Insurance, Employees." That is broken out into the five buildings.

There is a sheet "Income Tax, Withholding," which is broken out into the five buildings and which will give the information as to the income and taxes of those five buildings.

There is the F.I.C.A. sheet, Employers, which is broken out to the five buildings.

There is another sheet "State Unemployment Insurance, Employers," which is broken out to the five buildings.

There is another sheet "Federal Unemployment

(Testimony of Frederick I. Richman.)

in the operation of the individual buildings is possible of ascertainment from that sheet.

There is another sheet headed up "Other Current Liabilities," [468] that has five columns for the buildings, but there isn't a figure on the page.

There is another sheet, "Key Deposit." That has five columns headed up for the five buildings, but there is not a figure on the page.

There is a sheet "Trust Deeds Payable," and it is headed with the "Pacific Mortgage Corporation."

Q. (By Mr. Enright): That is the only trust deed payable?

A. That is correct. It shows here as the check being dated February 28th, which was the payment upon the Oliver Cromwell loan.

There is a sheet "Advance Rentals," and it has five columns headed up for the five buildings, but there is not a figure on the page.

There is a sheet "Deposits Held," which has five columns headed up for the five buildings, but there is no figure on the page.

There is a sheet "Reserve for Contingencies," that has nothing on it.

Q. I think that is adequate, Mr. Richman.

A. Over half of the remaining sheets, I would say, have nothing on them except a heading.

Mr. Whyte: I wonder if I might be permitted to take the witness again on your line for in-

mony of Frederick I. Richman.)

Voir Dire Examination

(By Mr. Whyte): Would you please turn to one of those sheets where you found a figure, something—turn to one of the sheets where you found a columnar heading and nothing on the page.

(Witness complies.)

“Prepaid Taxes”? A. Yes.

Are you able to state positively, Mr. Richman, that at no place in the books kept by the Receiver does anything appear for prepaid taxes? In other words, this is a ledger you are looking at, is it not?

That is correct.

Is it your testimony that at no place in the Receiver's accounts is the subject of prepaid taxes mentioned?

Well, they head up a page right at that point (indicating).

Perhaps I didn't make my question clear, Mr. Richman. Again I will inquire whether or not this book is the ledger.

I haven't been able to find anything in the receipts or disbursements or journal relative to prepaid taxes.

Have you in every instance in which you testified [470] there is nothing on these pages, which are headed with columns, and a ledger, looked at any of the books kept by the Receiver, the jour-

(Testimony of Frederick I. Richman.)

There is no entry on this sheet here, "Accounts Payable," which has five columns for the building. It is not set up.

The figure I am referring to appears in the journal of the Receiver's books. Journal 2, "Accounts Payable \$3,827.66" is not reflected on the ledger sheet of the accounts payable.

Q. Is that the journal, this black book?

A. That is the journal and cash receipts and cash disbursements.

Q. Very well. Let's start back here at 1, the first, where you say there is something, the figures are shown on the page. Will you go back to the first here?

A. (Witness complies.)

Q. Begin at the point you say there are unnumbered headings and there is nothing shown on the page.

Mr. Enright: This is voir dire examination of this witness, and I would like to develop my point.

My point is that the Receiver is claiming he rendered services, page 5, line 15, and made plans for revision of the accounting system, and I want to demonstrate he didn't render any such services.

The Court: All right. I didn't understand exactly what Mr. Whyte had in mind. I think what he is doing now is properly cross examination, not voir dire.

mony of Frederick I. Richman.)

(By Mr. Enright): Now, directing your attention, Mr. Richman, to the Receiver's testimony in his petition concerning rendering services in auditing tile, did you make an examination of his books, to see what you could find were base entries to support his page 5, line 9 of his Petition, where he says that he rendered services in regard to the tile in 409 apartments? A. I did.

What did you find?

The only bills that were—he had paid for work amounting to \$61.65 and \$12.00 for tile

That is \$73.65? A. Yes.

Now, what did you find in auditing or checking his records, to see what he expended or paid out for the amount of reconditioning stoves per unit or per

Well, I found out he sent out stoves to—many rebuilt stoves to be reconditioned. One at Canterbury [472] and two at the Fountain Manor in December, and then again in December at one at the Fountain Manor and two at the Iron Arms at \$25.00 apiece for reconditioning. His testimony was \$56.00 would be the reasonable cost at the time he obtained this order for reconditioning. A. That is my recollection.

Now, directing your attention to page 9, line

(Testimony of Frederick I. Richman.)
into escrow instructions at this time. I think I
say that—perhaps we can agree upon it.

The Court: I think you can agree on many
these things at the pretrial conference.

Mr. Camusi: Yes.

The Court: In fact, I was hopeful you would
agree upon so much the matter might be submitted
upon an afternoon's stipulations. [475]

Mr. Enright: I will certainly endeavor on my
part to do so.

I would like to offer in evidence—I understand
there is no objection—the application to the State
Control Board, which is a part of the Receiver's
files or formerly Mr. Richman's file.

The Court: It will be received.

The Clerk: Defendants' I in evidence.

(The document referred to was marked
Defendants' Exhibit I and was received in
evidence.)

Mr. Enright: That completes my direct examination.

The Court: All right. We will resume the trial
of this case tomorrow at 9:45. We will recess until
then.

(Whereupon, at 4:00 o'clock p.m., Monday,

June 7, 1954, an adjournment was taken until

Tuesday, June 8, 1954, at 9:45 o'clock a.m.)

BARNEY MANALIS

as a witness on behalf of the defendants,
g been first duly sworn, was examined and
ed as follows:

Clerk: Please be seated.

ur full name, sir?

e Witness: Barney Manalis.

Direct Examination

(By Mr. Enright): Were you associated in any manner with the Oxyaire Company during the period from October 1, 1953, through February 1954?

Yes, sir, I was.

What was the capacity of your association?

Vice president.

I show you Exhibit I in this proceeding, ask you if you are familiar with the transac-
vidence by Exhibit I? A. Yes.

An application for it.

Yes, sir, I am.

That involves one of the five apartments—let's see, which one does this involve?

On Normandie. That would be the Crom-
I believe.

418 South Normandie. A. Yes.

I want to direct your attention to the issuance of a permit and approval which were received from Mr. Roy E. Hallberg shortly after being mailed

(Testimony of Barney Manalis.)

A. We were so advised, yes, sir, but we had not yet received them.

Q. What did you do, if anything, in connection with the performance of that contract in the installation of those facilities after being so advised?

A. We immediately contacted Mr. Richman to find the approved plans of the Air Pollution Control District, if they had been sent to him.

He advised us they had and had been turned over to Mr. Hallberg, who was the Receiver for the Oliver Cromwell Apartments.

Q. Did you later attempt to or contact, in any manner contact Mr. Hallberg?

A. Quite a few times, yes, sir, but never successfully.

Q. Did you talk to anyone at the office or the Oliver Cromwell office of the Receiver?

A. Yes, a Mr. Roy Harrison.

Q. Can you fix approximately when it was that you talked to him concerning this subject matter, that is, the first time you just referred to here?

A. Well, after we were notified that the approval had been sent through from the Air Pollution District, and calling Mr. Richman, we then tried to contact Mr. Hallberg and was put in touch with Mr. Roy Harrison.

He advised us at that time that as the federal receiver for the apartment house he was not bound by the same rules as the local receiver.

imony of Barney Manalis.)

Now, I direct your attention to Exhibit E, a [480] letter dated January 22, 1954. Did the letter come to your attention as an officer of the Air Pollution Control, Inc., 357 North La Brea Avenue?

Yes, sir, that was addressed to me and I received it.

Now, bearing in mind the date there, January 22, 1954, did you have a conversation prior to that time with Mr. Hallberg or Mr. Harrison with reference to this——

About a week or ten days prior to that we had a telephone call, or I did, rather, from Mr. Harrison, that they had been cited at the Oliver Oliver well and for us to proceed with the contract for installation.

We advised Mr. Harrison at the time we couldn't do it because we had not received the approved blueprints from the Air Pollution District that they had sent to Mr. Richman, who in turn had turned them over to them.

Was there any discussion during that conversation or a later conversation concerning the substitution of materials to be used in the installation?

Yes, at that time one of the necessary component parts of our unit was an inconel metal that

(Testimony of Barney Manalis.)

definite time for the [481] starting of the installation.

Q. Later was the contract performed?

A. Yes, sir.

Q. And the job completed? A. Yes,

Q. Were the materials available and under your control in December to perform this contract?

A. Oh, yes. Yes, sir, we had it in stock, a matter of fact.

Mr. Enright: You may cross examine.

Cross Examination

Q. (By Mr. Whyte): Mr. Manalis, are you connected with Air Pollution Control, Inc.?

A. Not actively, no, sir.

Q. When did you leave that concern, sir?

A. Approximately two months ago.

Q. That would be sometime in April of 1954?

A. That is right. As a matter of fact, April 28th was the terminating date.

Q. You mentioned a moment ago having been in short supply on a particular type of metal. I think you used the word "inconel", is that correct?

A. That is correct.

Q. How is that spelled, Mr. Manalis? [482]

A. I-n-c-o-n-e-l.

Q. When you talked with Mr. Harrison,

mony of Barney Manalis.)

It was at that time that you told him the metal was in short supply?

That is right.

How long was it before that metal became available to you?

As near as I can recollect, within the next three weeks or maybe four. We found some of the suppliers that wasn't bound by government priority. That is how we were able to get it.

Do you recall talking to me as attorney for Hallberg over the telephone sometime during early part of February, during the course of conversation you told me that metal was unavailable?

I don't believe I know your name, sir.

I am John Whyte.

Well, I do remember a conversation with Mr. Whyte. At what time, I am a little hazy.

Very well. Then your testimony is that some time prior to January 15th, for a period of one to four weeks, the inconel metal, which was needed for this installation [483] at the Oliver Hill, was not available to your concern, is that correct?

Enright: To which objection is made. It is the statement of the evidence, that the material was not short two or three weeks before January 15th.

(Testimony of Barney Manalis.)

Mr. Whyte: I will reframe the question, Honor.

The Court: All right.

Q. (By Mr. Whyte): Is it your testimony for some time prior to about the middle of January 1954, and continuing for a period of three or four weeks, the inconel metal, which you needed for the installation of this incinerator equipment, was not available to your concern?

A. Well, the time prior to January 15th, I don't think it could have been any more than ten or two weeks at the most.

Q. Ten days to two weeks?

A. Approximately. In other words, it was right after the end of the year that this government directive came out freezing inconel metal and putting it on priority.

Q. Let's see if I have your testimony correct. For a period of from ten days to two weeks prior to January 15th, [484] and for the period of three to four weeks following January 15th, inconel metal was unavailable to your concern?

A. I think the restriction went even longer than that. We were able to find what we did that wasn't governed by priority.

Q. May I have an answer to my question, please, Mr. Manalis?

mony of Barney Manalis.)

not available for installation of the incinerator

Oliver Cromwell, is that right, sir?

Approximately.

Thank you. You have also told me for a period from ten days to two weeks prior to January 5th the same situation obtained, is that correct, sir?

That is right, sir, yes, sir.

Thank you. The time you talked to Mr. Harrison or about the middle of January 1954, did you tell Mr. Harrison either in substance or effect that you would get in touch with the Air Pollution Control District and attempt to do something about the warning notice that had been issued?

Yes, sir, I did. And we contacted the department there. We were powerless to do anything in relation to a citation that had been issued, that the company would have to appear. We so notified Mr. Harrison. [485]

Didn't you tell Mr. Harrison or Mrs. Hall that you had contacted the Smog Control Authorities and there was nothing to worry about, Manalis? A. No, sir.

You never made that statement?

Definitely not, not at that time. Are you referring to——

I am referring to the middle of January.

(Testimony of Barney Manalis.)

Mr. Witness. He is talking about a warning notice.
Do you understand?

The Witness: Yes, I do.

Q. (By Mr. Whyte): That document should be in evidence. Perhaps we can refresh your recollection.

Mr. Whyte: Do you have that, Mr. Clerk?

The Clerk: Which exhibit?

Mr. Whyte: You will have to let me see your exhibits.

Mr. Enright: It is not in evidence. Here (indicating).

Mr. Whyte: Thank you.

Q. (By Mr. Whyte): Mr. Manalis, I show you a notice on the stationery of Air Pollution Control District, dated [486] January 13, 1954, which bears the notation that:

“You are hereby charged with violating Section 24,242 of the Health & Safety Code of the State of California by discharging smoke in excess of that allowed from chute fed incinerator,”

that notice being directed to the Oliver Cromwell Apartment Hotel.

Is it with reference to that notice that Mr. Harrison called you on or about the 15th of January?

A. That is right, sir, yes, sir.

Q. It was in response to that call that you talked to the Air Pollution Control Authorities?

imony of Barney Manalis.)

As near as I can remember now, we expected that we had the prints in operation—the ones approved, rather, which they knew. And that we were told to go ahead with the installation of the equipment.

And as near as I can recollect right now, when I was contacted at that time said it probably would be all right for K. to go ahead.

Did you tell the Smog Control authorities, or did you talk to them on or about January 15th, that your company was in short supply of this special metal?

I may have, sir. I wouldn't swear to it.

It is your testimony that they told you it was all right to go ahead?

Well, we had the approved plans to go ahead, and they said all right, sir.

As a matter of fact, as of January 15, 1954, we couldn't have gone ahead without that metal, could we, you, Mr. Manalis?

Not and complete the installation, no, sir.

Whyte: No further cross examination, your honor.

Redirect Examination

(By Mr. Enright): As I understand it, Mr. Manalis, you did have the materials throughout the

(Testimony of Barney Manalis.)

Q. (By Mr. Enright): Did you have this material in supply in the month of December?

A. We stocked it, yes, sir.

Mr. Enright: No further questions.

Mr. Whyte: No questions.

The Court: May this witness be excused?

Mr. Enright: Yes, we would appreciate that.

The Court: Thank you, sir.

(Witness excused.) [488]

FREDERICK I. RICHMAN,

called as a witness on behalf of the defendants, having been previously duly sworn, resumed the examination and testified further as follows:

Mr. Whyte: Mr. Enright, unless you have any objection, perhaps we had better put this Note in evidence, January 13th in evidence.

Mr. Enright: I have no objection.

Mr. Whyte: Very well. This will be offered as the Receiver's Exhibit next in order.

The Court: Received into evidence.

The Clerk: Receiver's 4 in evidence.

(The document referred to was marked as Receiver's Exhibit 4 and was received into evidence.)

DATE

19

ER CROMWELL APT. HOTEL

PHONE NO. DU 7 2261

(NAME OF COMPANY)

8 S. NORMAN AVE

LA

CITY

(CITY OR COMMUNITY)

(STREET, NUMBER, ZONE)

5A ME

CITY

(CITY OR COMMUNITY)

(STREET, NUMBER, ZONE)

YOU ARE HEREBY CHARGED WITH VIOLATING SECTION 24242
OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFOR-
NIA BY DISCHARGING SMOKE IN EXCESS OF THAT ALLOWED
FROM CHUTE FED INCINERATOR

PHILIP ROBERTS

ELLA MC CONNELL

MGR

GORDON P. LARSON
DIRECTOR

By

Philip Roberts

ZONE

RS

76N590 10/53

80

RECEIVER'S EXHIBIT No. 4

LOG 83111

mony of Frederick I. Richman.)

Cross Examination

(By Mr. Whyte): Mr. Richman, I believe testified on your direct examination during the immediately preceding December 1, 1953, you received management compensation for your service in connection with the former Richman Trust, amounting to ten per cent of the gross income from the properties, is that correct, sir? [489]

Ten per cent of the gross income, excluding overhead items.

And out of that, I believe you testified that you paid a salary to Mr. Harrison, is that true?

I paid all overhead expenses. Salary to Mr. Harrison, office rent, telephone, stationery, typewriter, adding machine.

How much salary did you pay to Mr. Harrison?

A. \$450.00 a month.

In addition you paid your own office rent?

That is correct.

Telephone? A. Yes.

Typewriter? A. Yes.

Stationery? A. Yes. Postage.

Postage.

Court: You maintain an office other than your law office in the Subway Terminal?

Witness: No; it was the same office.

(Testimony of Frederick I. Richman.)

I understood you to say that you organized corporations, [490] is that right, Mr. Richman?

A. On occasions, yes.

Q. Did you also draw contracts for clients?

A. Yes.

Q. What tax work, if any, did you do for your clients?

A. Prepare tax returns for a number of clients handled with the then Collector of Internal Revenue, or, the agent in charge.

Q. You had other books of account in the office that reflected the affairs of other clients, Mr. Richman? A. Yes.

Q. Did Mr. Harrison keep up those books during the course of his duties as your secretary?

A. He did.

Q. You dictated a letter to another client, in reference to the formation of a corporation or the drafting of an agreement, did you dictate that letter to Mr. Harrison?

A. Mr. Harrison took my dictation when he was the only one in the office. For a time I had a stenographer that took dictation and typing.

Q. For how long was Mr. Harrison your assistant?

A. From about August 1952 on.

Q. You were away from the office and away from the——strike that. [491]

mony of Frederick I. Richman.)

I was.

When did that litigation commence?

January 1952.

It continued until, say, until within a few
s ago, when this case was settled?

This is still part of it, I believe.

During the course of that time, did you con-
sult with your attorney in preparation for the trial
of that action? A. I did.

Were those consultations rather extensive?

Depending upon the court hearings that were
going up.

When did those court hearings take place,
Richman?

Very frequently. I couldn't tell you, without
going over, to find out the number of times; the
register.

Were you present in court at all those hear-
ings substantially all?

Not all of them, but a good many I was
at.

When did the actual trial of the case take
place? [492]

It started in May 1953 and went for, I be-
lieve, about eight days and then was continued to
another number and went for about 12 days.

Between those intervals you were in con-

(Testimony of Frederick I. Richman.)

rents which were collected during a comparable period, December 1, 1952, to February 28, 1953, amounted to some \$97,404.58.

Do you recall those figures, Mr. Richman?

A. Whatever the figures were, whatever I testified to.

Q. I further understood you to testify that the figures, that the figures showing the rents collected during the period December 1, 1953, to February 28, 1954 were \$95,066.83. Is that right, Mr. Richman?

A. Whatever the figures were; those figures were taken from the Receiver's report, as shown on the amount shown on the Receiver's report, to which I added the \$1,290.59, to arrive at a total of \$95,066.83, being the rents the manager collected during February, but which the Receiver did not collect.

Q. I understand, Mr. Richman. So that the rents for the three-month period, December 1, 1953, to February 28, '53, exceeded by approximately \$2,337.75 the rents collected [493] during the period December 1, 1953, to February 28, '54, is that right?

A. That is correct.

Q. Is it your testimony that the rents collected from the apartment houses during your regim as trustee were somewhat or substantially in excess of those collected by Mr. Hallberg during his term of office?

imony of Frederick I. Richman.)

You made the statement, during the course of your direct examination, you never had a bank account like Mr. Hallberg, to do business with, is that right?

No, that is not correct. I said I never had a bank account like his, except during the time that the Villa Carlotta had been sold.

Whatever your statement was, I took it as close as I could, and I had you quoted [I never had a bank account like that to do business with.]

In substance, that is your testimony, that your bank account wasn't comparable to the one Mr. Hallberg was managing, is that correct?

That is correct. I never operated with that cash in the bank except during the period immediately after the sale of the Villa Carlotta.

Yet it is your testimony that for a comparable period [494] of time the rents collected under your management were several thousand dollars in excess of those collected by Mr. Hallberg, is that right?

For the period 1952-53, for the comparable period that the time the Receiver was in.

Now, you stated that you saw me at the hearing in the Municipal Court on or about February 1st, and I rendered no services whatever at that hearing.

(Testimony of Frederick I. Richman.)

with Mr. Enright in requesting a continuance of the matter for some three weeks?

A. I heard Mr. Enright request for the time in making the statement on there, and you said that was agreeable to you.

Q. How long were we all present there in Municipal Court that morning, approximately?

A. I don't recollect. He had other matters on the calendar that were heard first, and came through. The particular matter here took about three minutes.

Q. We were there somewhere in the neighborhood of three-quarters of an hour, were we, Mr. Richman, either waiting around or hearing? []

A. I couldn't say.

Q. You mentioned a conversation which you had with Mr. Hallberg shortly after December 1953, in which you claim that he told you he was operating a 40-unit apartment building, is that right? A. That is correct.

Q. Are you certain he didn't tell you that it was a 14-unit building, Mr. Richman?

A. No, it was a 40-unit on East Colorado.

Q. You are positive of that, sir?

A. I am.

Q. He told you that the apartment building was on East Colorado Street in Pasadena?

A. He did. I was particularly cognizant of

imony of Frederick I. Richman.)

You were familiar with this building Mr. Hallberg told you he was operating?

He didn't tell me what building it was. I was familiar with a certain section of East Colorado. I was wondering whether it was the same building I had been looking at.

I asked him what the address was, and he told me that he had been told not to discuss matters with me. [496]

You called Mr. Harrison quite frequently during the course of the receivership, didn't you, Frederick I. Richman?

I never called Mr. Harrison except to report something that had come in to me, that was reflecting on my credit, and that was all. I would receive the assurance it would be taken care of. Each time I asked for Mr. Hallberg; he was not in.

Did you testify, in your direct examination, that you went out to see Mr. Harrison, not with reference to your credit, but with reference to this subpoena citation that had been issued on a Saturday afternoon? A. I certainly did.

Didn't you further testify that you talked to Mr. Harrison on two or three other occasions and that you got information from him concerning the operation of the trust?

(Testimony of Frederick I. Richman.)

Q. Mr. Harrison had been your bookkeeper in your office for about how long, Mr. Richman?

A. He had been my secretary since August 1952.

Q. How much longer than that had he been in your office, if at all?

A. I think about two months. My former secretary [497] stated she was leaving and would take another. He came in there and worked under her for about two months.

Q. Mr. Harrison had testified on your behalf during the course of this litigation, had he not?

A. No.

Q. He never appeared in court for you?

A. No.

Q. You mentioned the public liability insurance policy covering these five apartment houses. I believe the question was put to you by Mr. Ennis as to whether or not any of your property was covered by that policy, and your answer was yes. Is that right? A. That is correct.

Q. Would your answer be no if I asked whether or not any of your household employees were covered by that policy?

A. My answer would be no, too.

Q. Will you state that under oath, Mr. Richman? A. On the liability policy.

mony of Frederick I. Richman.)

Mr. Camusi have brought records here. What is here I don't know.

Whyte: I would like to ask Mr. Camusi's date [498] present here if he would undertake and the policy of the compensation insurance, was in force immediately prior to Mr. Hall-term of office and produce it here in the next a, if that is convenient.

Powsner: It may be necessary to get it from dall, however.

Whyte: Thank you very much.

(By Mr. Whyte): You mentioned the fact, you looked over the files, Receiver's files, the were all scrambled up and jumbled up. Is that Mr. Richman? A. That is correct.

When did you look at those files?

The early part of March 1954, at the Oliver well.

You say the early part of March. Just when I mean?

No, I believe it was March 30, 1954. I have notation in my diary.

March 30, 1954? A. Yes.

At that time those files were in the possession under the control of Mrs. Tidwell, were they

Well, they were under the control of the

(Testimony of Frederick I. Richman.)

Q. Let's not fence around with one another Richman. You know that, do you not, after sold your half interest in these properties to Tidwell she took over the books of account and the properties? A. No, I do not know.

Mr. Enright: I object on the ground the tion is argument as to what constitutes "fence around."

The Court: Overruled.

The Witness: I didn't know she took over books of account and the records. I had been informed previously that any records of the Receivership that I had wanted to see, I would have to obtain a court order for it. That any records prior to the receivership, I could see any time by going there.

Q. (By Mr. Whyte): In any event, when you looked at these records and claimed you found the bills in a jumbled condition, you found them in such condition on March 30th of 1954?

A. That is correct. However, I was given the records by Miss Marr of Mr. Udall's office, stating she didn't know what they were, they were the Receivers' files, and those files were in just as jumbled a condition as all the others.

Q. Your permission to examine those files on March 30th came from Mr. Udall's office?

A. Came from Mr. Martin's office. [500]

mony of Frederick I. Richman.)

Q After the 1st of December, 1953, in which
you told us about your management fee for No-
vember 1953, is that right, Mr. Richman?

A That is correct.

Q Did you ever submit a bill to Mr. Hallberg
requesting payment of that fee?

A I was never requested to submit a bill. I did
not submit one. On the occasions I talked with Mr.
Hallberg, he said, well, give him time to get
tightened out and it would be paid.

Q You say you never did submit a bill to him?
A No.

Q You never demanded payment of that fee
from Mr. Hallberg?

A I did not know what amount the fee would
be because it was based on the income in Novem-
ber and he had all the records of November. He
would have to compute it.

Whyte: I have no further cross examina-

Redirect Examination

(By Mr. Enright): Concerning the subject
matter of your 10 per cent under the terms as
I have stated it, did you from time to time [501] time
draw operating moneys for the operation of the
company on your own credit? A. I did.

Q And what was the maximum amount you
could draw available for the operation of the company?

(Testimony of Frederick I. Richman.)

fied as to the increase in the value of the assets. Did you have you? I think you did. Is that your recollection? A. I don't recall.

Q. What was the approximate value of the assets of the trust when you became trustee or agent on January 1, 1946?

A. Approximately \$375,000.00.

Q. What was the value of those assets as of February 25, 1954?

A. About \$1,200,000.00.

Q. That is, the plaintiff paid \$600,000.00 for one-half of the assets, is that right?

A. That is correct.

Q. During the time that you were agent, manager of these assets, did you ever employ more than one person to work in your office, in which office the trust was being administered? [502]

A. On occasions I have had four or five employees in my office. When the trust litigation started I cut down on all outside work and concentrated on the defense of the trust litigation and very small amount of other business.

Q. The 10 per cent fee was agreed to at the time you conveyed one-half the assets in the trust, isn't that correct?

A. No, the 10 per cent fee was agreed to approximately a year and two months prior to the time the trust was created.

Q. At the time the contract for the trust was

imony of Frederick I. Richman.)

Whyte: I object to that on the ground the
ments will speak for themselves, as to what he
buted and what agreement was reached.

Court: What about it?

Enright: We are merely introducing re-
evidence as to the circumstances of the 10
ent fee. One of the circumstances is that the
ss, who received the 10 per cent, conveyed
he assets into the trust.

Court: What about that part of the objec-
which is based upon the well-known rule that
document should speak for itself?

Enright: I will introduce the trust agree-
I think it is a part of the records. I will
the trust agreement in evidence. I do not
t physically here, but [503] it is a part of the
records.

Court: We will take notice of it, as it ap-
in the court records.

Enright: May it be marked an exhibit?

Court: Yes, give it a number, Mr. Clerk.

Clerk: It will be Defendants' J in evidence.
(The document referred to was marked De-
endants' Exhibit J and was received in evi-
ence.)

(By Mr. Enright): Directing your atten-
to Exhibit J, did you, as trustor under the

(Testimony of Frederick I. Richman.)

available, unless the court files are here. I assume you were familiar with the trust agreement, Whyte.

The Clerk: Do you want me to get it from clerk's file?

The Court: If it is not here and you need the clerk will get it from the Clerk's Office. The files have been so voluminous he doesn't carry files in here.

Mr. Enright: Do you need it now, Mr. Whyte?

Mr. Whyte: If you are going to examine the witness on it, I have a right to see it and a right to cross examine on it. [504]

I may say I think this is all immaterial, any

Mr. Enright: But it is very material to us. If you arrive at 10 per cent. You contribute half the property it is a whole lot different than a person contributing nothing.

I will direct questions to another subject matter.

The Court: Well, Mr. Enright, of course, I am quite familiar with that trust agreement. If you want to find out things in it for my consideration I will consider them whether Mr. Richman testifies upon them or not.

Mr. Enright: I am quite sure the trust agreement does not recite, as a part of it, the inventory of the property conveyed. In other words, it

imony of Frederick I. Richman.)

in error. But that is what I have to find out, ss, from the document.

m quite sure it is within the knowledge of people, and I supposed Mr. Whyte's, that Mr. an did convey half of the assets into the

That is the point——

e Court: Really, I don't see that makes much ence on computing what compensation shall owed Mr. Hallberg.

Enright: If that could be agreed, that it was t Mr. Richman did convey half the assets, I proceed on [505] another subject matter. If why,——

e Witness: I believe the books of the Rich-trust are here and will show that in the books.

(By Mr. Enright): Is that an answer to my ment, Mr. Richman? A. Yes.

e Court: We accept that statement as evi-

. Whyte: I beg your pardon, your Honor?

e Court: I commented that, although it was ement, rather than in answer to a question, we t it.

. Whyte: I didn't hear the statement.

e Court: All right. The reporter will read it.

(The record was read.)

e Court: What they will show is Mr. Rich-

(Testimony of Frederick I. Richman.)

sure he also used the term "public liability insurance" in connection with the subject matter and whether or not your property or your employees were covered by either one of these policies.

If his question contemplated two different policies, would there be any difference in your answer?

A. Yes.

Q. Let's get this straightened out, so we understand. [506]

A. The public liability insurance was entered for the trust. It included no coverage for me whatsoever or anything that I owned. The policy belonged to the trust.

The compensation policy was my personal policy and the trust employees were picked up through my personal policy on that. That policy could not be transferred to the Receiver, because it would leave me open with my personal employees. So the Receiver took out a new compensation policy, paid a deposit of \$400.00 for it, to be used up for premiums, with a quarterly audit, which was a matter that was discussed the other day, with a refund on that deposit. It is money belonging to the Receiver and under his control, subject to the amount he used.

Q. As to the testimony the other day about the Receiver stopping payment on one of the insurance policies, which policy was that?

mony of Frederick I. Richman.)

That is correct. He set it up as an account as of December 31st and paid it sometime in January.

Did you have any conversation with him at that time that he stopped payment, or participated in a conference with him, with any other person, on that subject matter as to whether or not your property was covered by that public liability policy? [507] A. I did.

You did? A. Yes.

Is that the conference had at Mr. Dulley's office that you have already testified concerning?

That is correct. That was a conference at Mr. Dulley's office on December 4, 1953.

Enright: I have no further questions.

Recross Examination

(By Mr. Whyte): I would like to have some explanation on this 10 per cent of gross that you testified, Mr. Richman. Let's take the year 1953 as an example.

Assuming that year your 10 per cent gross, assuming you had been in office through December, would that have amounted to something in the neighborhood of \$10,000.00, would it not? Not figuring the deduction for a moment. I am talking about the total amount you would receive 10 per cent of the gross for.

(Testimony of Frederick I. Richman.)

A. I think we can get at it quicker from the return that was filed as an exhibit yesterday.

Q. Mr. Richman, I am going to take a page of a year prior to December 1, 1953. In other words, from December 1952 [508] through November 31, 1953.

I show you this book of account, pages headed "Management Fee," and the following figures appear in the columns:

December fee \$3,321.81; January fee \$3,280.03 or it may be \$3,380.03 here. Which is that, Richman? A. That is "2." It is "32."

Q. Then there is a notation I can't read here.

A. "Adjustment."

Q. "Adjustment" to January 31, '53. Is that an addition to the fee up above? A. Yes.

Q. February fee \$3,082.07; March fee \$3,352.00; April fee \$3,083.30; May fee \$3,026.57; June fee \$2,972.29; July fee \$3,176.35; August fee \$3,026.57; September fee \$3,068.89; October fee \$3,004.22.

Now, can you tell me where the fee for November is set up on the books, which you have not collected?

A. It is not set up. The Receiver should have set it up or paid it or charged it, but he has nothing about it, other than show it in his report as a payable of the receivership.

Mr. Whyte: I wonder, for the purposes of evidence,

mony of Frederick I. Richman.)

Court: Yes. I don't think it is pertinent to inquiry. I am wondering why you are laboring. It is something that is perhaps going to be immaterial to the controversy between Mrs. Tidwell and Mr. Richman, but how does it have anything at all upon what compensation Mr. Hallberg is to have?

Whyte: I think the figures will show, your Honor, that Mr. Richman received, for comparable period, somewhere in the neighborhood of \$40,000 to forty thousand dollars.

Court: He received that under a contract which the court has found to be unconscionable and void.

Whyte: I understand, your Honor. Then I will not pursue the matter any further, if the court finds it is immaterial.

(By Mr. Whyte): Just one or two questions, your Honor, about Mr. Richman.

Q. When I was at your office with Mr. Hallberg in the early part of December of '53, I seem to recollect that you had something on your door which indicated that you had a mortgage company or office, is that true?

A. That is correct, Consolidated Mortgage Com-

Q. Were you the president of that concern?

(Testimony of Frederick I. Richman.)

A. That was just about the only one since litigation started. I resigned my interest in Mc Machine Works and Wood Ice and Gas Company to take on the litigation.

Q. You were carrying on that mortgage company business for about how long prior to December of 1953?

A. I became president in January 1950.

Q. Mr. Harrison looked after the books of mortgage company? A. He did.

Mr. Whyte: I have no further recross examination.

The Witness: Could we have a recess?

The Court: We will take a short recess.

(Witness excused.)

(Short recess taken.)

Mr. Enright: Defendant rests.

Mr. Whyte: There will be a short redirection examination of Mr. Hallberg, your Honor. [511]

ROY E. HALLBERG

recalled as a witness on his own behalf, has been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Whyte): Mr. Hallberg, did you

mony of Roy E. Hallberg.)

cts which Mr. Richman had made with the
ollution Control, Incorporated?

I certainly did not.

Were you present in the court when Mr.
an testified that he had a conversation with
n or about the 4th of December, while you
traveling around to the various apartment
, during the course of which you allegedly
im you were operating a 40-unit apartment
ng on East Colorado Street? Did you hear
estimony? A. I certainly did.

What, if anything, did you say to Mr. Rich-
n that connection?

I said I had a 14-unit apartment building.
ere riding in a car at the time he asked that
on.

aid, "A 14-unit building and it is off East
do." I didn't say where.

Speaking now of the Western Arms Apart-
building and Mrs. Kennedy, the manager,
rs. Kennedy have instructions [512] as to
to do in the event the refrigeration system
e defective or operated improperly?

Yes.

What instructions had you given her?

To call the refrigeration company whose
she had on file and whose telephone number

(Testimony of Roy E. Hallberg.)

frigeration but other services in the apartment houses which might run into difficulty?

A. Yes.

Q. What other services?

A. Plumbing, for instance.

Q. There was some testimony by Mr. Rich to the effect that utility bills, particularly due the month of January, were not paid promptly when due.

Can you explain how that came about, Mr. Hallberg?

A. Well, I believe he was referring to December bills, wasn't he?

Q. Either December or January.

A. Well, we had a \$17,000.00 tax bill to pay in December. We had very little cash when we took over the building. And we did a little juggling with some of those [513] accounts payable in order to assure ourselves of enough to cover the tax payment.

Q. Because of the large tax payment that was mentioned that you deferred payment of the utility bills? A. That is correct.

Q. I direct your attention to the general ledger being one of the books of account which was examined by you during your period of receivership, and I am going to start about the point where Mr. Richman testified there were certain blank pages in

mony of Roy E. Hallberg.)

for five different apartment buildings, but figures appear on that page.

you explain that to the court, if you please?

Why, yes. We set up the account here, not for the immediate records—you understand, books were mostly kept on a cash basis. We not go back into the previous management to up the unexpired insurance and set it up.

Enright: I move to strike the witness' ment "We set it up", as a conclusion on his

Court: Granted. Show who did it, if you it is important.

Witness: I worked on that and directed at time [514] Mr. Harrison to set this up, so these entries could be made at the proper time.

(By Mr. Whyte): When was the proper to make any entries in this unemployment insurance premium account?

Well, your unemployment insurance premiums are paid in advance. They are taken from payments made to the individual people who working for the trust. And at the end of three as those are supposed to be picked up. We not reached that period yet.

Enright: I move to strike the answer on around it is a conclusion of the witness, when

(Testimony of Roy E. Hallberg.)

Mr. Whyte: The last statement was, "We had not reached that period yet."

Q. (By Mr. Whyte): When would that period have been reached, Mr. Hallberg?

A. In March.

Q. Sometime after February 28, 1954?

A. Yes.

Q. Turning to the next page in the ledger, which appears to be blank, headed "Prepaid Taxes," there is a breakdown for Canterbury, Fountain Ma LaLoma, Oliver Cromwell, [515] and West Arms, but no figures appearing on the page.

Can you explain why that page happens to be blank, Mr. Hallberg?

A. That was just put in there for the time that account might be needed. We hadn't reached a point where it was needed.

Q. Is it good bookkeeping practice to set up an account for prepaid taxes in connection with keeping books of account of this character?

A. It is quite——

Mr. Enright: Objection is made on the ground it calls for a conclusion of this witness, what bookkeeping practices are.

The Court: You might qualify him. I think I did it once before, I am not sure. Let's be sure and qualify him.

mony of Roy E. Hallberg.)

graduate? A. Northwestern University.

What degree did you receive there?

Bachelor of Science in commerce.

What training, if any, did you have in accounting?

I did two years' public accounting work out of the field.

What accounting experience have you had in the field? [516]

Oh, the experience I have had here is carrying on our own records and our own books and the companies I was with, Hall Industries—I set that up in Missouri—and at the present time I do not go into books or records of various companies.

Did you keep the books on account at the Construction Tooth Corporation?

I did that.

And your two years of public accounting was out in the field, where was that carried on?

In Chicago.

Whyte: I submit that is sufficient qualifying experience for your Honor. The man knows what good accounting practice is.

Court: Ask your question then, based upon the foundation, and see what happens.

(By Mr. Whyte): Based upon your experi-

(Testimony of Roy E. Hallberg.)

ground it calls for a conclusion of the witness
witness is not qualified.

The Court: Overruled.

The Witness: Ordinarily you try to set up
counts that [517] will be in use sometime during
a fiscal period, and this was one item that
often is used.

Q. (By Mr. Whyte): It is a good accounting
practice? A. It is, definitely.

Q. Turning to the next sheet in the ledger
which is blank, "Utilities Deposits", will you
explain why that sheet is blank?

A. There were no deposits made for utilities
so far as I know.

Q. Is it good accounting practice to anticipate
the possibility there will be utility deposits and
show that entry in your ledger?

Mr. Enright: Same objection.

The Witness: That was put——

Mr. Enright: Just a minute. I object on the
ground it calls for a conclusion of this witness
what is good accounting practice.

The Court: We will have to consider it as
bookkeeping practice, rather than accounting
practice. This man has qualified as to general commercial
administration. He is qualified with regard
to the bookkeeper's level, rather than the accountant's.

mony of Roy E. Hallberg.)

sheet in your ledger to [518] pick up those

A. It definitely is.

The next sheet in the ledger, "Deposits
men's Compensation Insurance", contains sev-
figures, so I will pass over that.

next sheet, "Advances on Conditional Sales
cts". That sheet appears to be blank.

you state why you set up the sheet for
ances on Conditional Sales Contracts" and
is blank?

It was conditional as for the operation of
ilding at—from time to time you may have
e a deposit, and there hadn't been any trans-
that required it during our period.

Is it good bookkeeping practice to anticipate
may be advances on conditional sales con-
in connection with the operation of apart-
buildings? A. It is.

Enright: To which objection is made on
ound it calls for a conclusion of this witness.

Court: Overruled. I take it that you would
e same answer as to each one of those pages,
Whyte, so I hope you are not going to burden
cord.

Whyte: I don't wish to, your Honor. I think
some of these pages the answer will be that

(Testimony of Roy E. Hallberg.)

flected in this other book of account which kept.

The Court: Why not proceed to that cl entries then?

Q. (By Mr. Whyte): Let's just go over briefly and you can state whether or not your answer would be the same or whether it would be different, because the entries are reflected in your journal.

Take the sheet "Notes and Accounts Payable" which contains various items on it.

I will pass that.

Mr. Enright: I will object to the question on the ground it assumes a fact not in evidence, he has no journal. His previous testimony was he had no journal.

The Court: You might lay a foundation.

The Witness: There was no previous testimony, there wasn't a journal.

Mr. Whyte: Just keep quiet, Mr. Hallberg.

Mr. Enright: I will stand on the record on the witness' original testimony.

The Court: Let's have a foundation as of this date in any event, so that one can look back at the transcript of the questions you are asking, and lay a foundation immediately before the sequence of questions. [520]

Q. (By Mr. Whyte): Mr. Hallberg, I draw your attention to this large black book. The

mony of Roy E. Hallberg.)

Enright: Object on the ground it calls for exclusion of the witness, as to identifying that as it being a journal or otherwise. It is ob-
jection is attempting to have the witness to testify in opinion it is a journal; he is not qualified.

Court: Can't a bookkeeper testify in his opinion a book is a journal? Objection overruled.

Enright: I don't think so, as a matter of fact.

Witness: This definitely is a journal.

(By Mr. Whyte): Was that book kept in your custody or control during the three-month period of the receivership? A. It was.

Are the entries which are shown therein remains of transactions which took place at or approximately about the time as they are reflected in the book?

Well, the journal is mostly used for transferring of amounts from one account to another. It isn't a matter of a transaction at all.

Enright: I move to strike——

Witness: Once in a while you do run into transactions that you do put in a journal. But they were mostly [521] closing and things like

(By Mr. Whyte): I didn't make my question to Mr. Hallberg. As to the items which are

(Testimony of Roy E. Hallberg.)

Q. Is this book, which you have identified as a journal, one of the books which was kept in the regular course of your business as the Receiver of those apartment buildings? A. It is.

Q. Very well. Having laid the foundation, I will proceed here with the ledger.

The "Accounts Payable" sheet is blank. Is it blank for the reasons which you have heretofore specified, as to the preceding blank pages?

A. That is correct. Can I elaborate on this?

Your accounts payable on a cash basis, when you do not enter your bills as they come in, but enter them as they are paid, certain times when you want to close out the books you will list them all together and enter them in your journal and from there they are transferred to certain accounts where they are set up. They are afterwards reversed—entries are reversed and it is taken out as they are paid.

Q. I am going through the remaining pages which [522] appear to be blank, and in the interest of saving time——

The Court: Mr. Whyte, where is this important to the immediate inquiry before the court?

Mr. Whyte: The impression was sought to be created by Mr. Richman these books had been set up in a way where pages had been left blank although nothing had been done.

mony of Roy E. Hallberg.)

bank and why nothing is shown on them. I want to go beyond what the court feels is ary.

Court: I don't feel it is necessary. The is given to examining these documents, and I would make a very poor bookkeeper, I have erable theoretical information on the subject.

Whyte: If the court doesn't feel it is neces- hat settles the matter.

further examination, your Honor.

Cross Examination

(By Mr. Enright): Mr. Hallberg, you didn't any of these entries in this journal or ledger?

No, I did not. I had a bookkeeper doing that.

Mr. Harrison?

Mr. Harrison and Miss Findeisen, yes. How-

Mr. [523] Harrison did mighty little in that

Oh, he did? Are you familiar with his hand- g? A. Yes.

Are you familiar with Miss Findeisen's hand- g? A. Naturally.

Miss Cosgrove's handwriting? A. Yes.

, can I keep those here?

Whyte: What is this?

(Testimony of Roy E. Hallberg.)

(The document referred to was marked defendants' Exhibit K for identification.)

Q. (By Mr. Enright): I direct your attention to Exhibit K for identification, and ask you if you can identify the handwriting appearing at the top of it? A. Yes.

Q. Whose handwriting is it?

A. Miss Cosgrove's.

Q. You received that document?

A. Yes, I saw this.

Q. Who is Miss Cosgrove?

A. Mrs. Hallberg. [524]

Q. You received this document about December 22, 1953?

A. I can't tell you the date now.

Q. Approximately that?

A. I wouldn't know. I saw it.

Q. Did you see the Paragraph 7, and I direct your attention to your previous testimony concerning the Oxyaire matter, and reading as follows:

"The Houdry catalyst for the Canterbury-
thur Jan was at the C.A. yesterday wanting
to make measurements. This morning I contacted
Barney Manalis (the man who obtained the
tracts from Mr. Richman). I explained Mr. Hall-
berg's appointment, and told him that both matters
were in suspension for the time being;"

Did you see that?

mony of Roy E. Hallberg.)

Memorandum from Mr. Harrison. Mr. Harrison not here.

Court: It is merely a question of whether it.

Enright: I will offer it in evidence. He has received it.

Court: It will be received.

(The document heretofore marked Defendants' Exhibit K was received in evidence.)

(By Mr. Enright): Do you recollect the one just before Mr. Whyte interrupted?

Will you state it again?

You recollect seeing this Paragraph 7 concerning the installation of the smog control equipments being under suspension for the time being? Yes.

Were you or were you not advised by Mr. Harrison that he had advised Oxyaire to suspend performance of that contract? A. No.

But you saw this document?

The only thing that was being held up for the approval of Mr. Whyte.

You saw the document? A. Yes.

It is from Mr. Harrison, isn't it?

That is correct.

And your wife, Miss Cosgrove, signed it?

(Testimony of Roy E. Hallberg.)

Q. Were you in, about the apartments, during the week [526] of December 22nd?

A. I managed to get there quite often, yes.

Q. On the week end?

A. Sometimes on a week end. Sometimes during the week, as I told you before.

Q. You got there December 24th, the day before Christmas, didn't you?

A. That happened to be one day I was there.

Q. Now, directing your attention to the handwriting in this ledger, will you point out any portion of it that is not in Mr. Harrison's handwriting?

A. I can show you lots of it. There is a page not in his handwriting (indicating).

Q. Now you are referring to February 1954?

A. Here is some more (indicating).

Mr. Enright: May we have that one page—

Mr. Whyte: Let's identify the page for the record here.

Mr. Enright: Are you through?

Mr. Whyte: The witness is referring to a page headed "Month of February 1954", which seems to be page No. 8. This is a ledger?

Mr. Enright: Are you through, Mr. Whyte, please?

Mr. Whyte: I am merely trying to be helpful.

mony of Roy E. Hallberg.)

[527] the record shows what you are talking about.

(By Mr. Enright): Now, Mr. Hallberg, you have a sheet No. 8 bearing an entry at the top, dated "1 of November 1954". A. All right.

Just a moment, if you will, please, sir.

O.K.

That pertains to the expenditures made for the month of February and the expenditures made in your direction on or about March 7th?

This does not contain all expenditures for the month of February.

My question wasn't whether it contained all expenditures for February. It pertains to the expenditures made about March 7th or after the time you call on a Sunday evening, and you dismissed someone there to issue checks covering business incurred during February, doesn't it?

That is correct, yes.

Now, whose handwriting is that?

Miss Findeisen's.

Miss Findeisen's? A. Yes.

You are referring to page 7, also?

Yes.

Whose handwriting is that? [528]

Miss Findeisen's.

And that involves the expenditures made

(Testimony of Roy E. Hallberg.)

Q. That involved an expenditure on February 1954?

A. That is right.

Q. Who drew that check?

A. That looks like Harrison's.

Q. Yes. And it covers checks down to doesn't it?

A. That is correct.

Q. Now, the checks after check No. 370 drawn by whom?

A. That was Miss Findeisen's.

Q. Was that in her handwriting, the stubs?

A. Yes.

Q. I direct your attention to stubs 372 to Tell me whose handwriting that is.

A. Miss Findeisen's.

Q. The next, 375 through 377.

A. Same.

Q. 378 through 380.

A. Same.

Q. 381 through 383. [529]

A. Yes.

Q. Is Miss Findeisen's?

A. Yes.

Q. 384 through 386.

A. Miss Findeisen's.

Q. Will you turn the pages and state whether or not any of those checks were drawn by Findeisen?

A. Checks are all in her handwriting.

Q. Just a moment. All of them through the of that book, the stubs?

A. Yes, they are.

Q. All right. Now, I direct your attention

mony of Roy E. Hallberg.)

Now, I want to refer back to Citizen's Bank No. 482, the stub. Who drew that check?

Miss Cosgrove wrote that one out.

Did she write out the checks after that date, ending with 483, the check dated March 8,

Will you state that again?

Did Miss Cosgrove draw the checks coming with No. 483 on——

She drew that one.

484, did she draw that one? [530]

She did.

Did she draw all the checks thereafter appearing in this Citizens Bank statement through stub No. 500? A. Apparently she did.

Now, those were the checks covering the approximate six thousand dollars paid after March

A. Yes.

Miss Cosgrove drew those?

She drew those that you—the stubs you showed me there, she wrote.

Now, directing your attention to the stubs Nos. 501 through 508,——

Whyte: Do you want to identify that as a Citizens Bank book, too, Mr. Enright?

Enright: Being stubs Nos. 501 through 508

(Testimony of Roy E. Hallberg.)

The Court: Wasn't that what the man went on his principal case and on this rebuttal he called here to simply give his conversation certain limited few transactions which had testified to against him?

We are not going to reopen the entire examination of his services now. [531]

Mr. Enright: It is to rebut what I conceive be the Receiver's conclusion that he rendered services in preparing these books and records.

I want to demonstrate that he rendered him so far as he is concerned, no services. A Miss Grove drew some checks for him after he, the Receiver, had phoned you, your Honor, on March Sunday evening, and then they went out to and his wife, Mrs. Hallberg, wrote some checks and that, I say, is not rendering services as a Receiver.

The Court: If you will have the various writings identified, I will run through those to see who wrote what.

Mr. Enright: That is what I was doing at every time——

The Court: Let's not take these checks seriously. We will be here all day on this case, and I have jury coming in at 1:30.

Mr. Enright: There are only these remaining checks.

mony of Roy E. Hallberg.)

These were written by Miss Cosgrove, as I
before.

Now, directing your attention to check No. _____
What is for \$123.88, is that correct?

That is right. [532]

And that was issued to Jean Findeisen?

That is right.

Was that for payment for her services for

Whyte: Again I am going to object. This proper cross examination; outside the scope direct examination.

Court: Sustained.

Enright: I offer to prove through the witness that he has paid a sum of money for the making and issuing of these checks, the services rendered after March 1st, through this canceled check. I will next ask that a check here be marked for identification.

Clerk: Defendants' L.

(The document referred to was marked Defendants' Exhibit L for identification.)

(By Mr. Enright): Directing your attention to the defendant's L for identification, do you recognize the handwriting upon that document?

Yes.

Whyte: Same objection, outside the scope

(Testimony of Roy E. Hallberg.)

your attention to the [533] endorsement. W
handwriting is that?

A. Must be Jean Findeisen.

Q. Do you know?

The Court: Do you recognize it?

The Witness: I recognize—it is apparently
her handwriting. I wasn't there when she signed

The Court: It looks like her handwriting?

The Witness: It does.

Q. (By Mr. Enright): She received that
of money? A. Yes.

Q. She rendered services attending to the b
of the receivership for the sum of money evidenced
by this check? A. Yes.

Mr. Enright: I offer Exhibit L in evidence.

The Court: Received into evidence, although
seems to me it is proving what has already been
proven. Generally speaking, it is sufficient to prove
a matter once.

(The document heretofore marked Defendant's
Exhibit L was received in evidence.)

Mr. Enright: No further questions.

Mr. Whyte: I have just two questions,
Honor.

Redirect Examination

Q. (By Mr. Whyte): Mr. Hallberg, you re
lect about when you gave me, as your attorney,
contracts which Mr. Richman had entered [

mony of Roy E. Hallberg.)

has been testimony on it at least twice, once in Mr. Hallberg and once through Mr. Whyte.

Court: Sustained. I would like to have the other's explanation, though, of the delay in having the air pollution control work done.

Would you like to tell me in a few words what about a delay and how come you got cited in court?

Witness: The contracts were returned by Mr. Whyte with the statement that it was permissible in order and to go ahead. I gave the—everything I had to Mr. Harrison and told him to mail them to the manufacturer of the smog control unit. At the time that—that, incidentally, was about the first of January. Two weeks later, when I received the warning notice, I asked Mr. Harrison about it and he brought out the blueprints out of his office; they had not been mailed. At this time I told him to get them over there immediately, and I said also that that should have been done at the time I first directed him to mail them. It was a week and a half or two weeks' delay right there.

Court: Was anyone ever fined or was any civil penalty exacted from the trust because of this delay? [535]

Witness: No, sir.

(Testimony of Roy E. Hallberg.)

Mr. Whyte: Objected to. The document was filed with the court will speak for itself.

The Court: Objection sustained. I understand that the Receiver asks for a reasonable fee for doing everything, and Mr. Whyte has broken it down into ordinary and extraordinary.

Mr. Whyte: No further questions of Mr. Hallberg, unless the court has something more.

Mr. Enright: I have something more.

Recross Examination

Q. (By Mr. Enright): You made no entries in your diary, did you, concerning this January or approximately January 1st attention to the Oxyaire matter, did you, that you have just testified to?

A. Apparently not, although at the time I explained to you all entries were not made the way I didn't go into detail on every little matter.

Q. You did make an entry on January 1st, "Received notice re Oliver Cromwell incineration. Oxyaire vice president said he would handle the matter. Urged him to get on our job. Drawings not received." [536]

Did you make that entry?

A. I did. That is when I found they hadn't sent it.

Q. You didn't transmit the drawings until January 22nd, as shown by Exhibit B?

nony of Roy E. Hallberg.)

adn't been sent, and I dictated a letter and
them on the way.

You signed this letter that states, "This let-
confirm Mr. Harrison's telephone conversa-
th you on January 15th"? A. Yes.

Enright: I have no further questions.

Court: All right, Mr. Hallberg. [537]

* *

Angeles, Friday, June 18, 1954, 9:00 a.m.

Court: Good morning.

is a day we have 30 minutes' argument on
de. How do you want to divide it, 30 minutes
retch or have an opening and then a reply?

Whyte: I prefer to open and close.

Court: Proceed to open. We also have a
ial on here today, which will make it neces-
er us to keep ourselves to the hour, and we
tter take up that matter with Mr. Camusi
eday.

Whyte: Before I commence, your Honor,
ask for instructions with reference to two
hich have been contracted by the Receiver.
the sum of \$89.20 for one copy of the deposi-
f Roy Hallberg and John Whyte.

other in the sum of \$100.00 as the fee to be
o the expert witness, Mr. Mann, who an-

Mr. Whyte: You mean which depositions v
they?

The Court: Yes.

Mr. Whyte: They were depositions of Mr. E
berg and myself, which were taken by Mr. Enr
and we requested one copy. [541]

The Court: Well, you had better coast on y
credit for a little while, and I will give you
structions when this case is decided.

Mr. Whyte: Very well. I feel that the court
a very adequate picture of the testimony which
been presented at this hearing. I am not g
to take much time.

I simply want to point to three or four of
salient features of the testimony and some of
points which were stressed in the objection
by the defendant Richman.

Let me turn to page 7 of the Objections filed
the defendant and refer there to the matters
which the Receiver was originally attempted t
surcharged. Those matters are three in num
that is to say, the principal ones are three
number.

First of all, that the Receiver failed and
glected to collect rents from the five apart
house managers for February 26, 27, and 28, 1
That sum was approximately \$1,200.00, I belie

Secondly, that the Receiver did not collect p
cash funds in the hands of the managers in
sum of \$785.00.

was due March 1, 1954, in the sum of \$2,-

and stress was laid upon those during the
of the testimony. Let me say right now that
it has been conceded [542] by the defendants
they are not attempting to surcharge Mr. Hall-
personally for those amounts, but that they
look to the funds in the bank account to make
whole, in the event that this court finds they
be made whole, as between themselves and
plaintiff Mrs. Tidwell.

View of that posture of the case, any derelic-
t duty on the part of Mr. Hallberg in this
connection would go simply to a diminution of his

and he is not being surcharged personally, any-
thing that he may have done that was wrong in
connection can simply operate to reduce the
amount of the fee which the court will otherwise

take up each item individually and see
whether Mr. Hallberg did do anything wrong, was
diligent, was he ineffective in any manner.

Of all, as to the collection of the rents for
January 26, 27, and 28, the court will recall the
evidence of both Mrs. Hallberg and Mr. Hallberg
to the effect that Mr. Udall, the manager for Mrs.
Tidwell, stated on Sunday afternoon, February
1, that the managers were not to permit the

Secondly, let me turn to the deposition of Hallberg, at page 106, line 13: [543]

“Q. ‘The Western Arms and the Canterbury managers reported that they had so much outstanding they would prefer to make the collections on the week end. It is not good business to make collections when the banks are closed. The apartment houses had safes for safekeeping the receipts, whereas the Receiver’s office had none. The Receiver was advised by his attorney to act in that capacity the morning of March 1st, Monday, consequently the March 1st funds on hand could not be picked up. The Receiver’s report mentions this fact only in relation to the total receipts for February not being complete for comparative purposes.’

“Now, is that the reason, as stated here, why you did not pick up the moneys from the two apartments on March 1st?

“A. That’s right.”

In other words, both because the plaintiff’s attorney refused to allow the Hallbergs to pick up the money and so instructed the managers, and because there were no adequate facilities for keeping large amounts of money over the week end, money couldn’t be deposited in the bank. There was no safe at the Receiver’s office at the Oliver Cromwell.

Under those circumstances, I submit that the Receiver [544] has done nothing wrong with respect to his failure to pick up these rents. In

arm done. There is no damage done. Why the Receiver be penalized?

ndly, as to the petty cash fund, the terms order removing the Receiver from his active of management specified that he was to re-moneys in the bank and under his control. order was given to me to interpret. I advised Receiver that the money in the bank should be ed by him.

to the petty cash fund, I was of the opinion they constituted part of the operating assets e apartment houses. That the operation of apartment houses was to continue. That it s I interpreted the order, the intention of the s they desired the operation of the apartment should continue in a smooth fashion.

recall the testimony of Mrs. Kennedy, the er of the Western Arms Apartment House, what those petty cash funds were used for. id they were used for key refunds, little bills, ners for the can man who evidently picked e garbage, extra help, and employees from yment agencies, washing windows and walls.

ubmit to your Honor that those funds were ary to the continuance of the operation of apartment houses. [545] That for that reason Receiver properly interpreted the order of the

pay his attorney fees and any other items which may arise.

Finally, as to the third item, that is to say, payment on the Oliver Cromwell trust deed, payment was made, and I believe the check dated on the 27th of *November*. At that time Receiver had full power to make that payment. His powers did not terminate until 5:00 o'clock p.m. on the 28th, Sunday.

Mr. Richman himself testified that during the time he was in control of the receivership he on several occasions made the payments, which were due on the 1st of the month, before the 1st of the month arrived. I submit that it was a perfectly prudent payment for the Receiver to make, that he should pay an obligation falling due on the 1st of March by a check dated on the 27th of February.

Again, what harm has been done? That was the obligation of this estate, that had to be paid by somebody. If it has inured improperly to the benefit of Mrs. Tidwell, that matter can be adjusted through the moneys in the bank account through the hearing which your Honor is about to hold, to adjust the rights of Tidwell and Richman. [546]

So I say as to each and every one of those items no harm has been done. Unless your Honor holds that the Receiver has acted negligently in any way, his fees should not be affected.

Let me say just a word about this small account

which was not contradicted in any way. He said that he furnished me with the files and contracts the day before Christmas 1953. That I exchanged those, sent them back to him and told him the contracts were binding, that he should go on to have the installation made.

The plans had been furnished to him by Mr. Harrison sometime during the latter part of December of 1953. On or about the 1st of January, or thereafter, he instructed Mr. Harrison to take those plans to the Air Pollution Control, Inc. Mr. Harrison did not do so. There was no denial of this testimony. Mr. Harrison did not appear to deny it.

On or about the 14th or 15th of the month a long notice was received from the Smog Control authorities. At that point, where Hallberg disclosed the plans had not been sent, he asked Mr. Harrison to send them. He asked Mr. Harrison to take them to the Smog Control authorities, or, rather he asked him to call the Oxyaire group.

Mr. Harrison talked with Mr. Manalis. Mr. Manalis was [547] to do something about it. Then a criminal citation was issued at the end of the month. The hearing was held and subsequently the citation was dismissed. No fine was ever levied on this estate, no damage was done to anybody by the expenditure of some time and effort in going in court and having the proceedings dis-

Pollution Control, Inc. He stated positively on cross examination that for ten days to two weeks prior to January 15th, and for three to four weeks thereafter his company was in short supply of metal which was necessary to this installation. In short, his company could not have made the installation during an extended period of over a month, from on or about January 1st, until the 1st of February.

Under those circumstances, if the Receiver failed to notify the Oxyaire people promptly, his negligence in that respect, if any, did not proximately cause the result, for the installation could not have been made in any event, because the Oxyaire people couldn't make it.

One further word about what was said about the Receiver's negligence in not visiting the apartment houses often enough, that he wasn't on the job, the court heard the testimony of Mrs. J. J.hardt, the manager of Fountain Manor. She testified that Mr. Hallberg was in her apartment building between seven and [548] twelve times.

Does that sound to the court as though the Receiver wasn't on the job?

Furthermore, the Receiver had a competent bookkeeper. He had his wife, who three times a week picked up these rents and deposited them in the bank. He had help, admittedly, which was competent and which did a good job for him, just as Mr. Richman had competent help when he was

properties, he testified he had many other he had other things in his office. He was from the office and in court on numerous ns in connection with the trial of this case. referred with his attorneys regarding strategy. , he didn't devote a hundred per cent of his o the management of these properties.

mittedly, neither did Mr. Hallberg, but he did a job, and the report he rendered shows it. ried on through himself and his agents com-y.

, as to the amount of his fees, again there contradicted testimony in the record by an witness, that it is customary and usual in ea for apartment house or for managers of properties of this nature to receive five per e gross rents. That, of course, is substantially what Mr. Richman received. [549]

ll attempt to draw no parallel with Mr. Rich- because the court has already decided that ichman's fee was excessive. But just a word ay own fees in the matter.

ve one case for the court which I might cite. ase is Missouri & K. I. Ry. Co. vs. Edson. It Eighth Circuit case. The opinion was written lge Sanborn, and it is reported in 224 Fed., 9. That case holds, and I will simply state uestion which was presented on the first page opinion:

fending himself against baseless charges of
feasance in the discharge of his duties as
Receiver, * * *

The court gave an affirmative answer to
question and an opinion of some three or
pages, and developed the matter rather care-

The court, I am sure, in its own discretion
fix an adequate fee for both the Receiver and
attorney. There is testimony in the record as to
value of the attorney's fees. Mr. Laugharn
fixed a thousand dollars a month should be paid
as to the advising of the Receiver during the
receivership.

Mr. Fussell, who appeared here later in the
mony, [550] was of the opinion that from \$1,000
to \$1,200.00 was proper insofar as the defense
the Receiver against the charges laid against
by the defendant were concerned.

I would like to reserve whatever time I have
to answer anything that may be said by Mr.
right.

Mr. Enright: May it please the court, a
reading of the report of the Receiver would
manner divulge that the \$2,000.00 paid upon
Oliver Cromwell, March installment, was a
obligation.

A fair reading of the report of the Receiver
result in the conclusion that there is a concealment
of the facts that \$785.00 petty cash is funds under
the control of the Receiver.

lect. He didn't recite that as being something was still belonging to the fund.

The only thing he said was there was \$2,000.00, 1,290.00.

Now, let us not for one moment think that we hastily filed our objections here. We filed them because there were those three specific items that were conferred upon and given to the plaintiff, and the Receiver improperly did it and had his attorney analyze it in any manner the order of February 26th he would have to have told the Receiver, "This is petty [551] cash that is under your control. Keep it."

That man wants to be paid \$60.00 an hour or \$33.00 an hour for that kind of advice. He wants \$3,000.00 ordinary fees.

Let's get this straight once and for all, so far as I'm concerned I doubt sincerely whether an attorney, a pure ordinary attorney, rendering only legal services, is worth \$30.00 an hour. I don't know who he is. They are not worth it in the industry.

Break of basic industries, cement, packing, textile, garment, and oil, and all the other basic industries. They just don't pay that kind of money for legal services. They might pay it because some of them has some financial connection, or on some other basis, for services, but for pure rendition of legal services they are not entitled to that amount

dinary services, \$1,000.00 a month, for going three days before the Receiver was qualified telling that Receiver to stop bank accounts and ing the Receiver to go to apartment houses and moneys before the Receiver had even qualified, if he expects to be paid \$30.00 an hour for t eleven hours, then I say that would be a comp abuse of discretion and a miscarriage of justice.

I once heard—I don't know the authority for but it is quite apropos—the law isn't yet that rabbits can decide how much cabbage will be for the owner. Mr. Whyte is no more than other rabbit. If he thinks he is going to eat up fund at the rate of \$1,000.00 a month, plus extraordinary services, I am sure your Honor won't along with that proposition.

We have not levied our objections to the ceiver's failure to collect the petty cash and collect those rents. We must first go through Receiver and have an order of this court that Receiver should have collected that money, because that was the order of this court, to collect money on February 26th. At 5:00 p.m. February 28th he was to continue to collect those rents.

Now, once the court orders that the Receiver should have, then our rights are protected. I am not interested in going through an endless course of litigation, so the objections were well taken and properly taken.

But your Honor that wasn't the most serious

and I feel it my duty to a court to submit authority for what I say or what I propose. And I cite this case of *Cake vs. Mohun*, 164 U.S. 311, because it is one of the earliest cases, and I like to cite the earliest and the latest Supreme Court or [553] authority, so the court will know the law was at the beginning and at the end of jurisprudence. There the court said:

In view of the fact that the receiver had never been in the hotel business; that he employed a man at \$125.00, and a part of the time at \$150.00 a month, and required of him a bond for the faithful performance of his duties; that he was not prevented from giving his usual attention to his business and ordinarily spent only his evenings at the hotel—we are bound to say that, if it had been a principal question, we should have fixed his compensation at a considerably less amount.”

The Supreme Court goes on to explain that the compensation must be reasonable, to protect the Receiver's compensation, and to protect the owner of the property.

Those words are apropos here.

Now we have a Receiver that paid \$1,800.00 during a period of three months for Mr. Harrison and Mr. Findeisen. He had five managers, and he was required to devote his time to the attention of the properties. He only spent his week ends.

There is only one reasonable deduction that can

business—so this Receiver spent some week en

Now, a more recent case is *In Re Pittsburg, N.R. Co.*, 75 Fed. Supp. 292. The court had this to as to what should be considered in fixing the fe

“The considerations that should be contro with the court in fixing compensation are the ture of the matters administered, the amount volved, the complications attending it, the am of bond required, the time spent, the labor skill needed or expended, the degree of success tained under all circumstances, the fidelity to tails, the appreciation evidenced as to the respo bilities of the position, the character of said res sibilities, the expedition with which the trust been administered, in view of results reached, the method, character, and promptness of the counting, having regard, as a standard, to wha paid for somewhat similar services in the perfe ance of official duties. * * * The value of the s ices rendered should not be considered gener but only with reference to the trust administered

Now, let's apply that statement of the cour what occurred here. Mr. Hallberg was empl by the County of Orange at \$355.00 a month. didn't disclose it to anybody, not even his atto or this court.

He was supposed to spend 40 hours a workv there, and I am sure he did, beginning a new

His wife, Miss Gump, was a

g? He wasn't available when the gas broke Western Arms refrigeration.

ve considerable difficulty, your Honor, in ling Mr. Hallberg's conduct in this matter, submit it is to be taken into consideration g compensation. His time spent was nominal. another authority that is very clear, and it, quite recent, is *In Re Insull Utility Invest-* 6 Fed. Supp. 653, at 661, affirmed in 74 2d) 510.

report spoke of the receiver's prior experi- ad knowledge in these words:

other matter—Does the performance of the rship call for special knowledge and spe- aining? If so, does the receiver who is ap- d qualify? A single illustration will suffice. ident of a railroad has reached his position 0 years of service. He has devoted his en- 56] life and all his time to transportation ss. His road goes into receivership, and he ed receiver. He continues to devote his entire and his experience is as valuable as a re- as it was as president of the railroad. Under reumstances, the court must of course con- the compensation which the appointee re- as president of the railroad. The same ap- o the receiver of any other utility. If the ap- be an engineer or an operator, whose years

confidence of the court, is not equally qualified to render the service for which the technical experience of the engineer qualifies him."

Now, let's see what happened in this matter. Hallberg represented to this court that he had a great deal of experience.

"Mr. Hallberg was for some years associated with a property management operation in Chicago. He has considerable acquaintance and experience in that type of work. Since coming to California, he has held various positions with different [557] of corporations, and has been engaged in the management of property for elderly relatives. He has considerable apartment property in Southern California.

"I called him and found that he is available. I asked him to come in here at about 2:00 o'clock today, so that counsel could meet him."

Now, he continued on a few minutes later, and reaffirmed those representations. The facts are, Your Honor, by his own admission—and there is no conflict in the evidence—in 1931 he was involved as an employee of a bondholder of a defunct bank in Chicago.

In 1947 he landed here in California, according to his own admission, and he bought two homes. One house at 85 and the other across the street, and then he invested \$18,000.00 in the Morgan Construction Tooth and drew a hundred dollars a few months ago, and then he went down

He went to work over at the County of Orange. I remember, your Honor, he represented to me that to your Honor he had the time available for me on this receivership. Three days, after making that representation in the chambers of this court, he took a full-time job down at [558] the County of Orange.

Now, your Honor, I know the man testified that for about four years he made \$40,000.00 a year in the marketing of wine in New York, or vineyards, before 1947. I don't know what the nature of his services were. I know this, that in regard to this court's decision he didn't have the qualifications to be a manager of apartment property in this area. His little diary of data, which was handed to him by Miss Cosgrove, evidences very clearly that he knew very little about apartment management.

Now, your Honor, under those circumstances, I submit that this man is in this court with very, very unclean hands, to say the least. I know your Honor sought to have him appointed, but, on the other hand, I know that he should have at least made a full and complete disclosure to your Honor before you confirmed him and appointed him.

He drew \$355.00 a month for his services in the County of Orange. He came up here on a few occasions. He sent his wife up here to pick up the rents and deposit them in the bank and that

rate of compensation paid in private industry don't know whether I agree with it or not, but in any event, the appellate courts have laid down the rule that public officials are not [559] compensated at the same rate as private individuals in private industry. Their rates are lower. That is especially true, I think, in the federal judiciary. Whether it should be that way or not, nevertheless it is a fact.

This man had no risk of any kind or nature on his part. As a matter of fact, Mr. Whyte's conduct and the testimony entered in this record shows that your Honor interceded to a degree in obtaining the man's bond for him when he was qualifying, especially qualifying.

Now, they put on an expert witness here at five per cent for a property manager who furnishes everything, who furnishes the Harrison's, the deisens, who furnishes the office, who furnishes the telephone, who furnishes all the facilities. It is five per cent according to their own expert and the Realty Board at Los Angeles. It is five per cent for collections under \$2,000.00 and it is three per cent for collections over \$2,000.00.

The rents here were far in excess of \$2,000 a month. Assuming he had had the qualifications to be a property manager, none of which he had because his only experience in apartment house property, except this incident back in '31 in Chicago, was that he and his wife, Miss Cosgrove, owned a 14-unit apartment house in 1940.

ce with one apartment [560] over there. Does
ualify one any more than this trial has qual-
ne to be a property manager, and I think I
earned quite a bit during the course of this
nd hearing concerning apartment house man-

y, the time the receiver devotes to the ad-
ration was commented on in the Insull case.

the court said another important factor in
mpensation of the receiver is the time de-
to the work and the character of the work
med.

s man devoted very little time. He was here
he qualified, the first two or three days after
pointment. Then he went to work on a Wed-
y down at the County of Orange.

was here the day before he appeared before
ourt in support of a petition for authority
ovate and remodel the apartments. He ap-
d for his fees hearing.

y, under these circumstances, that is, first,
iver who undertook to devote his entire time
t is the only reasonable deduction that can be
from this record at the time of his appoint-
-who devotes only week ends, at most, and an
onal weekday, who represents that he had
ications, long years of experience, what com-
tion is to be paid him is the question. And so

He has been paid \$355.00 each month by County of Orange. I suppose they should be allowed their expense money or allowed something, but integrity and no concealment is the first basis of executive employment. You must have integrity first, before you are ever employed. And I submit that it should be considered in fixing his fees.

So far as the attorney's fees are concerned, this was a true base claim, not a basis claim, of objection to this accounting, and I can't see the wisdom nor the justice nor the reasonableness of any law of law that will permit a man to come into court and say, "I want \$3,000.00 for my services and if you don't pay them to me you will pay me another thousand dollars, if you object to my \$3,000.00 and that is the net effect of their argument.

They want now \$3,000.00 for ordinary fees. They want extraordinary fees on that smog matter, well, I won't further discuss. The record is in black and white.

Then on top of that, they want another thousand dollars for attorney's fees because we objected to paying \$3,000.00 plus extraordinary.

Thank you, your Honor.

The Court: Now, Mr. Camusi, we didn't finish our jury trial yesterday, so I will have that jury back here to finish it this morning. [562]

Can you go forward with the pretrial matters in the Tidwell vs. Richman phase of this case?

if I could be excused at 11:00. I have a mat-
just can't put over.

Court: We will continue that phase of this
g until Monday afternoon.

Camusi: Your Honor, I am sorry again, but
e starting a will contest case in Orange County
ay. These last three months have been just
t of proportion to what a man can do. I don't
what to say.

Court: How long do you think the will con-
s going to take?

Camusi: We have estimated it won't exceed
ial days, and it is a good chance it will be
erably less.

Court: What about your time, Mr. Enright?

Enright: Well, I am always available at the
nience of the court. There are three or more
ers in the firm of Mr. Camusi. They have par-
ted in this proceeding throughout, and I am
sure one of them can be here. It has always
ny experience, in appearing in this court and
her federal divisions of this court, my calen-
must be convenienced to it.

eel this matter is one well briefed already.
is very little left, if anything, to be consid-
on the pretrial. [563]

ey have submitted their memorandum, and
I think we can stipulate to a few facts, and

about ready to send the secretaries up to try some of the cases. We have five men in the office and have just been terribly busy. I don't know what has happened, but the last two months we have been unable to cope with all the case load we have.

It is one of those unfortunate things, where we haven't been able to put over hardly anything.

The Court: Who is going to try the will test?

Mr. Camusi: There again we have a very young man in the office who has done all the work of the office and I am coming in the last minute to sit and hold his hand.

The Court: You can start holding it Tuesday morning. We will continue the pretrial on this until Monday at 2:00.

Mr. Camusi: Your Honor, we are defending a half-million dollar estate, and this boy has been practicing for a year.

The Court: It is going to be the first day of trial and it is his responsibility, and you are going to hold his hand.

We will require someone of your side of the bar to be here [564] at 2:00 o'clock on Monday.

All right, Mr. Whyte.

Mr. Camusi: Am I excused then, your Honor?

The Court: Yes.

Mr. Whyte: I am certain that the court recognized that Mr. Enright's statement was replete with facts and figures.

which he represented here, he stated, for example, that the Receiver came in only on week days. That was denied by the Receiver many times, and that question was put to him by Mr. Enright.

Hallberg testified positively he came in on week days during the week, and even worked nights. He stated that two or three days before the Receiver was qualified I went out, I think he said for four days I went out with him and induced him to pick up moneys from the apartment-house managers, and in that connection spent many hours, I note from my time slip, for that day which was the day before the Receiver was qualified, which was on December 1st—the Receiver was qualified on the 2nd—and I spent about four hours going around with the Receiver and over to the Union Bank.

He spoke about the Receiver's lack of experience—the only experience he had had was running apartment properties back [565] in Chicago. Of course, he completely left out of consideration the fact that the Receiver had a 16-unit house down here in Pasadena, and another four-unit apartment house in Pasadena. The Receiver and his wife got in and did the actual physical work at those properties, they painted, renovated, carpeted.

I think this court was extremely fortunate to have obtained a man of Mr. Hallberg's background

lish? That is the testimony. Did he run this in a negligent, poor fashion?

Now, let's see how his stewardship compared Mr. Richman's.

When Mr. Hallberg went in there, there were apartments which hadn't been painted for years. He came into this court and petitioned for authority to renovate. That order was granted. He and his wife saw to the decorating of these apartments and the repainting of them. Mr. Richman didn't do anything like that.

So far as I know, he didn't come into this with petitions for authority to renovate and to set the standard of these apartments.

The Court: Wasn't it a judicially administered trust?

Mr. Whyte: In any event, Mr. Hallberg was given the job [566] sufficiently to see, in order to keep the vacancy factor in these apartments and get the maximum for them, that you had to improve the apartments, and he did it.

Secondly, the vacancies were reduced out of the Western Arms Apartment, alone during the month that Mr. Hallberg took over, from eight to three. Does that look like a poor job of managing apartment buildings?

Finally, Mr. Richman testified that the rent was a comparable period, under his stewardship, I believe, \$2,300.00 more from December 1,

within some two thousand dollars of what Schmann took in during a comparable period? What the basic economic conditions governing apartment houses might have been during these periods.

In other words, the fact that the Receiver may have been on the job full time, which we admit, is the important or controlling factor here. He is responsible agents who were on the job. The facts which he accomplished testify to the fact that his administration was a successful one.

As to the nature of his fees, I am sure this court will not overlook the fact this Receiver was dealing with an estate valued at a million two hundred thousand dollars. The Receiver was obligated on a \$100,000 bond. When a man undertakes [567] a litigation of that sort, surely, the responsibility he assumes is worth something, insofar as compensation which should be awarded him is concerned.

Don't dignify some of Mr. Enright's remarks with reference to my fees. He seems to think that an hour is entirely out of line, despite the testimony of the expert witnesses. I recall Mr. J. H. Morrow, one of the deans of the Bar, testifying in Judge Hall's court, and other attorneys Melveny & Myers, in connection with the Federal Home Loan Bank litigation. They said the fee per hour of Mr. Works and Mr. Fussell

I am not going to make any excuse for asking that figure, in view of the size of the estate and the matter involved.

This Receiver hasn't misrepresented anything to the court. When he came in here at the time of his appointment he knew nothing about the Co of Orange job. He took the job. It wasn't a time job. He had to spend eight hours a day. If it was taken up with preparation of reports, he could do at home, which he frequently did at home.

He contacted clients in the evening after hours, so far as appraisals were concerned. This left him with time, [568] not only to supervise the activities of the Receiver, but to consult with Hallberg every evening as to the results of the work.

I don't think it is necessary to say any more. I said at the beginning, the court has an adequate complete picture of the testimony given here. The Receiver and his attorney have supervised the properties worth a great deal of money. They have a complete report, and I am going to leave it entirely to the court, to your Honor's discretion, what you believe to be a reasonable fee for both those gentlemen.

Thank you.

Mr. Enright: There may be some uncertainty in the record concerning the deposition of Re-

portions, if any, I desired to move to strike.
waive that motion to strike.

Secondly, I am not certain as to whether or not
deposition of Mr. John Whyte is part of the
evidence. I would like to have it received in evidence,
as Mr. Hallberg's.

Court: So ordered.

Enright: Thank you, your Honor.

Court: I suppose we best consider this mat-
ter submitted until after we have completed the
evidence. [569]

Enright: That is my understanding, and I
think it most advisable.

Court: There has grown up a habit in this
court—I am not speaking of this case—but attor-
neys have taken to writing letters arguing and re-
questing their cases. The Rules say that shouldn't
be done.

I will be glad to receive any memoranda filed
with the clerk in the ordinary course. There hasn't
been any order in this matter. You haven't asked
for permission to file.

Do you want any such permission or have I heard
enough?

Enright: I am willing to submit the mat-
ter with the points and authorities and memorandums
as submitted.

Los Angeles, Monday, June 21, 1954, 2:05 p.m.

The Court: Shall we come on the record?

I suppose the most practical thing is to see if we can arrive at an understanding as to just what the issues are between Mrs. Tidwell and Mr. Richman and how far those issues can be determined upon the record which has now been made, and in what areas we will need to take further testimony.

What is your view of it?

Mr. Powsner: I think you proposed a certain number of stipulations in your Memorandum, Your Honor. Enright.

Mr. Enright: Yes. Your Honor, I believe I stated the differences in my Memorandum, that is, the differences between the plaintiff and the defendant.

I further proposed that those differences could be settled upon the present record, although I did not refer to the present record in my Memorandum, but by the addition of orders already made by the court in this proceeding and a part of the record, including the escrow instructions executed by both parties, the mutual release executed by both parties, and I would like to add, which I did not refer to in my Memorandum, the Smog Control contract which has been frequently referred to, but I think we are all agreed to so far as the parties are concerned.

That would leave the record in this status: the [5572] court to decide the \$785.00 netty

y two thousand dollars, and the services of
ichman for the month of November 1953, the
before the Receiver took over.

y, I was pleased to observe that upon exam-
plaintiff's Memorandum that on page 8 of
Memorandum, I think it is line 13, to identify
urately, concerning the Oliver Cromwell two
nd-dollar payment, plaintiff stated:

endant Richman claims that the Receiver
he March, 1954, mortgage payment on the
Cromwell trust deed in the sum of \$2,027.25.
at be true that payment should have been
by Plaintiff Tidwell from her own funds and
dant Richman would be entitled to a credit
e-half that amount."

t is exactly our position on it, so I think
s more or less in a stipulated form, if they
to——

Powsner: I think the situation——

Richman: May I finish?

Powsner: We have that particular check,
is No. 433. In the check, if it so states, that
s for the March 1st payment, I will stipulate
s state that.

to the conclusion of whether or not it was the
a [573] payment, which is considered, accord-
to the agreement, to be an obligation of Mrs.
ell, I can't stipulate as to that. There may be

but I am unwilling to stipulate completely Mrs. Tidwell should reimburse the Receiver. I am willing to stipulate that the check has on it the information it has on it, whatever it is.

The Court: And that information truly reflects the purpose of the payment?

Mr. Powsner: Yes, subject to—well, that the information contained thereon is true.

Mr. Enright: I will accept that stipulation.

The Court: You seem to be in agreement on the issues, as Mr. Enright stated them.

Mr. Powsner: I think Mr. Enright has stated correctly the demands he is making upon Mrs. Tidwell. I think he hasn't stated the counterdemand. Mrs. Tidwell's demand against Mr. Richman could read the list. There are taxes——

The Court: Well, the purpose in going over this openly is that it invites an immediate answer to the part that is immediately stated, and thus we can break down the burden that is ahead of us at trial, a little better than [574] by simply taking the attitude that it is all in our respective memoranda.

Mr. Powsner: I understand. In other words apparently Mr. Enright mentioned four items, and Mr. Enright claims either against Mrs. Tidwell or against the fund.

I agree those four issues are involved, and I think those are the only four demands made by Richman.

are the real property taxes on the apartment which Mrs. Tidwell paid out of her per-
funds for the first six months of 1954. It is
intention that there should be a proration
so that the first two months' worth of those
should be reimbursed to her out of the Re-
s funds. That the first third would be
77.

a, secondly, there are utility bills for a por-
the month of February, which Mrs. Tidwell
personally, in the amount of \$1,877.50. And
it is our contention that these should have
aid by the Receiver and, therefore, Mrs. Tid-
should be reimbursed out of the funds in the
of the Receiver for this amount, before any
n of that fund is made.

dly, Mrs. Tidwell paid out of her own funds
80 for the Oxyaire units. It was our conten-
at this was an obligation of the trust during
ceivership and should [575] have been paid
Receiver.

n we contend Mrs. Tidwell should be reim-
out of the Receiver's funds for this amount.
thly, we claim there was \$4,499.29 collected
Receiver in February, which amount repre-
March rents. These went into the fund, and
im, since they were March rents, Mrs. Tid-
as entitled to them as a whole, and she should
with respect to the fund of

tend these should have been paid personally by Richman, and we don't feel these should be out of the receivership, but paid directly by Richman out of his personal share after div of the Receiver's funds.

That is five items. I think that is—no, I think that completely states our claim. I think is a claim for \$158.00 as to compensation, or fund of premium on Workmen's Compens Policy.

I know Mr. Camusi, in his most recent memorandum, didn't include it. However, he included it in prior memorandum, and I don't want to state he is dropping it.

The Court: Do you want us to understand one of the questions before the court?

Mr. Powsner: That is correct. [576]

The Court: What is your view as to evidence to establish these claims? Can I get it from the record as it has been developed, or will it be necessary to supplement it by the addition of some documentary or oral evidence?

Mr. Powsner: What is your position on Mr. Enright?

The Court: Mr. Enright has told us he wants us to consider the Oxyaire agreement, the escrow instructions, the release, and I think a check on

Mr. Powsner: I think the other evidence and other additions to the record should be considered

Tidwell paid for the taxes, we don't have to see evidence she did so, and so on and so on. And as to the utility bills, also.

Court: What about that, Mr. Enright?

Enright: So stipulated. He mentioned the only.

Powsner: That is right.

Court: Someone has been ordering transcripts of all the proceedings that have been going on. I assume that is a continuing order, or I would not be taking some notes.

Are you going to have transcript of this? [577]

Powsner: Yes, we will order transcript.

Enright: We have ordered transcript.

Court: I don't know who has. But I slipped my habit of knowing it has been coming up, relying on a continuance of that.

Powsner: I think that is reasonable. We will order another transcript. We have discussed the transcript on the taxes.

Enright: May I comment? You left one out. You are making claim for an escrow fee \$9.00?

Powsner: That is right. That was left out of the most recent memorandum, but appears in the next memorandum.

Enright: It is in the most recent, too.

Powsner: It is in issue, too.

Court: Are you agreeing that was the es-

I will stipulate to that. You did pay it.

Mr. Powsner: I don't know it was one-half the escrow costs.

Mr. Enright: Then I will stipulate you that amount.

Mr. Powsner: Will you stipulate we paid \$577.50 for Internal Revenue stamps?

Mr. Enright: Yes, so stipulate.

Mr. Powsner: And will you stipulate Mrs. well paid [578] out of her personal funds charges for utilities for the five apartment houses for months of February in the amount of \$1,877.50?

Mr. Enright: The amount, I am sure, is less than that amount. And if we can stipulate on all remaining, for the record, I may be willing to stipulate on that one, also.

The Court: If you are not, it is the sort of matter that is susceptible of such easy proof that we can both probably check your figures.

Mr. Powsner: I think you have five packets of utility bills.

Mr. Enright: I will be willing to submit those five packets, if that is your proof.

Mr. Powsner: I haven't looked at the packets.

Mr. Enright: There they are (indicating). Camusi handed it to me.

Mr. Powsner: That is correct.

Mr. Enright: If that is your proof, I will stipulate they can go into evidence.

Mr. Powsner: I will stipulate they go into

shown payment in excess of \$1,877.50, and the would represent March payment, but there ,877.50 relating to February utility payments. ever, I find myself in the somewhat awkward on that I haven't examined personally many e items of debt here. Since I haven't exam- those utility bills, we are not willing to rely se solely for our proof as to this matter.

I am willing to stipulate they go into evi- for whatever weight they have, and if we e necessary that we be allowed to introduce evidence on that subject.

Enright: I will stipulate they go into evi- that is, the memorandum and the bills you here.

Powsner: I am speaking of the utility bills.

Enright: The five utility bills for the five ment houses.

Powsner: That is right.

Court: Does that stipulation include the sition that Mrs. Tidwell paid those bills out personal funds?

Enright: Yes.

Powsner: Then there is the payment made rs. Tidwell to the Smog Control people for xyaire unit, \$2,658.80.

Enright: Well, I am informed the Contract a lesser amount. I have seen no evidence for easter amount

Mr. Enright: Yes.

Mr. Powsner: Can we stipulate it be \$2,600 and we can close this matter, I think, quite quickly?

Mr. Enright: That is the amount called for in the Contract.

Mr. Powsner: Well, we will stipulate it is \$2,600 and we can argue about the \$58.00. It should be a small argument.

Mr. Enright: O.K. Now, the amount of revenue stamps, I think, is the only remaining one.

Mr. Powsner: I think we stipulated to that.

Mr. Enright: O.K.

Mr. Powsner: No, there are rents for March 1954. We claim that Mr. Hallberg collected in February rents of \$4,499.29, which are March rents.

The Court: Do you have a tabulation of the rents?

Mr. Powsner: I do not have, your Honor, I haven't seen any in the file so far.

The Court: Is that going to be an issue we have to take evidence on?

Mr. Powsner: That is what I am going to determine now. They may have definite information to the contrary.

Mr. Enright: Well, I am quite sure we can agree upon the amount of February rents, but before we do——

Mr. Powsner: I think March rents we are referring to.

Mr. Enright: I am quite sure we can agree

to see the managers' month-end reports for month of February. As soon as we can spend, an hour on those five reports for the five apart-houses, I am sure we can agree or else submit you——

Powsner: What you consider to be the cor-
mount?

Enright: Yes. It is something that is easy
certainment, if you can furnish to us the
ly reports of each of the managers for the
of February, which reflects the rents that
collected in February.

next question is what portion of that rent
or the month of February and for the month
rch.

Powsner: I will agree to furnish you with
statements. However, I won't agree to be
by what the books contain. In other words,
ps, as I said, I have no definite information
how this sum was reached, and perhaps the
would show a lesser sum. And it would be
osition that certain amounts were erroneously
d February rents, but actually March rents,
ve would want to prove those by some inde-
nt means. I am not sure about that. It would
to be left open.

ever, of course, we will submit it to you and
the books will reveal the sum I have men-

we could [582] submit the whole matter to court.

Mr. Powsner: I think so. Yes, I will stipulate assuming that you agree the amount is as I stated.

The Court: You can get together on that agreement at your individual conveniences then.

Mr. Powsner: Yes.

The Court: And bring in a stipulation. It probably will be easier and save your time if we do not have to have a further extension of this pretrial conference.

Is there any element about which we will have to take oral evidence?

Mr. Enright: None, in my opinion.

The Court: There is the \$58.80.

Mr. Powsner: The possibility is that there may be some oral evidence required on these rent items. We have just been discussing, the rents collected in February, and claimed as March rents.

The Court: That assumes a lack of success.

Mr. Powsner: That is right.

The Court: If you get together on the \$58.80 and you probably can take your individual files and sit down in conference and you can work out the \$58.80 item and also the rent item.

Assuming you do get together on that, and agree on a stipulation, do you want to file further memoranda, or have [583] you written enough?

Mr. Enright: I believe I have written enough.

ing the filing of further memorandum, in lieu of argument?

Court: Yes. Or do you want to argue orally? Whatever you like. You know the problem and know your individual temperaments and how to best work it out.

Enright: I would suggest that we be directed to stipulate or not stipulate, say, within a reasonable period of time, five days, or something like that, and then if the court could find time to convene us for 15 or 20 minutes, that each come and orally discuss and argue the exact points involved. We might be able to aid the court in getting to the core of the problem. That would be the thought on it.

Court: Well, suppose we say that you either arrive at a stipulation or series of stipulations, or make the effort prior to the last day of June, that if you do arrive at a stipulation, that we set the matter for oral argument on July 6th at 10 o'clock.

Powsner: Your Honor, I wonder if it would be at all possible to defer oral argument in this case beyond the month of July. Mr. Camusi has been out of the State during that month. I think he wants to argue the matter. [584]

Court: My giving you that date was not for any of convenience, but I had in mind that

If you want to put it over beyond the July date, it will have to go into a September date.

Mr. Enright: I would prefer to waive oral argument and submit some kind of a, say, not exceeding four-page explanation to the court before July.

My reason for asking that it be handled in this manner is this: I believe it desirable that the Receiver's fees in this matter all be submitted at the same time.

The Court: I think it is to everyone's advantage to get this tag end of the litigation straightened out and over.

Mr. Powsner: It isn't my desire to hold up payment of the Receiver's fee. I don't see that the ascertainment of the reasonableness of his fee and his attorney's fees is dependent on the resolution of the issues between the plaintiff and defendant.

The Court: They rather fall naturally on the same table for consideration. And I would like to have one more bout with Tidwell vs. Richman, and then sign it off.

Mr. Powsner: I understand what you mean.

Mr. Enright: That is my feeling, too, Your Honor. It is difficult to work up these matters, analyze them and go in [585] and discuss them every time you do there is energy involved. That is why I want to do it all at once.

The Court: Particularly if it is one of those problems that stimulates the recollection of matters that should be considered on others.

a short informal memoranda on July 6th, I be happy to accept that in lieu of oral argument if you are going to do that, let me know of time so I can know whether to be here at 1 o'clock on the 6th.

Powsner: Mr. Richman and I, or somebody, get together and come to an agreement as to how the matter is to be conducted, by memorandum or argument, on the 6th, and will inform the court of the conclusions we come to.

Enright: We will meet between now and the 6th and agree to what we can stipulate to and what we cannot.

Court: Let's have these documents received in evidence now, so the clerk may mark them and then commence to have them.

Enright: May I read them off?

Court: Yes, read them off and hand the documents to Mr. Whyte.

Enright: First, a mutual release. This office has an undated, but it is the form used by the court, and [586] I think it is agreeable that it be

Clerk: Defendants' A.

Court: That is admitted.

DEFENDANTS' EXHIBIT A

MUTUAL RELEASE

Lyda Tidwell, individually and as co-trustee as beneficiary under Richman Trust, hereby releases each of the following named persons or corporations, their agents and servants of any and all claims, known or unknown, that she may have against any one or all of them, from the beginning of the world to the present time, and each of the following named persons and corporations releases all of them, their agents and servants, individually and jointly, release any and all claims, known or unknown, that they or any one of them have against Lyda Tidwell, from the beginning of the world to the present time, said persons being:

Frederick I. Richman, individually and as trustee and as beneficiary and as agent under Richman Trust;

J. B. Witt;

Witt Ice and Gas Co., a California corporation;
Modern Machine Works, a California corporation;

Consolidated Mortgage Co., a California corporation;

Formula Products Co., a California corporation;
Elizabeth Johnson, formerly Elizabeth Porter

Dated this.....day of March, 1954.

.....

.....

J. B. Witt

Witt Ice and Gas Co., a California
corporation,

By

Modern Machine Works, a California
corporation,

By

Consolidated Mortgage Co., a Califor-
nia corporation,

By

Formula Products Co., a California
corporation,

By

.....

Elizabeth Johnson, formerly

Elizabeth Pomy

—————

Court: That is for the court to consider as
a copy of the lease that was potentially ex-
posed?

Enright: Yes. The second exhibit, Exhibit
the mutual dismissal, dated March 25, 1954,
is a part of the court record. May it be re-
ceived, the original, by reference?

Court: Yes.

(The document referred to was marked De-
pendants' Exhibit B and was received in evi-
dence.)

Mr. Enright: Exhibit C, a Stipulation between the parties, dated February 26, 1954, which is a part of the court record.

The Court: It will be received by reference.

(The document referred to was marked Defendants' Exhibit C and was received in evidence.)

[Printer's Note: Defendants' Exhibit C is a document entitled "Stipulation" dated February 26, 1954, and is set out at pages 54-55.]

Mr. Enright: Exhibit D, the Order made by the court, pursuant to that stipulation, which was dated February 26, 1954, and is a part of the court record.

The Court: That is received by reference.

(The document referred to was marked Defendants' Exhibit D and was received in evidence.) [587]

[Printer's Note: Defendants' Exhibit D is a document entitled "Order" dated Feb. 26, 1954, and is set out at pages 55-57 of this record.]

Mr. Enright: Exhibit E, the escrow instructions executed by both parties.

Mr. Powsner: It is a buyer's and seller's escrow.

Mr. Enright: Yes.

The Court: Received.

(The document referred to was marked Defendants' Exhibit E and was received in evidence.)

(Page One)

ESCROW NO. 100-3456

ESCROW INSTRUCTIONS

February 26

1954

BUYER

NIA BANK HEAD OFFICE LOS ANGELES, CALIFORNIA

at the time specified in this paragraph I will hand you having paid \$100,000.00 to F. I.

of escrow and with which \$100,000.00 concerned).

and you a Dismissal with Prejudice and n of Judgment in that certain United ct Court Case No. 13742T, Southern Dis- l Division entitled "Tidwall vs.

and you any instruments and/or documents necessary and/or required of me to termin- ain Declaration of Trust known as "Richman Trust" dated November 1, 1945 and will co-trustee, F. I. Richman in the execution of any instruments and/or documents complete this escrow. I WILL ALSO HAND YOU

nds and documents, including notes secured by encumbrances I create required from me to enable you to comply with these instr-

are authorized to use and/or deliver provided on or before ~~May 1, 1954~~ May 1, 1954 instruments

ord entitling you to procure Title Insurance and Trust Company's Standard Owner's Policy for \$20,000.00 as per attached rider

EL 1; The easterly 149.75 feet of the northerly 60 feet ot 1 in Block 2 of Beaudry Tract, in the city of Los Angeles, y of Los Angeles, state of California, as per map recorded in 1 Pages 401 and 402 of Miscellaneous Records, in the office e county recorder of said county.

EL 2; Lot 17 of Culver's Hollywood Park Tract, in the city of angeles, county of Los Angeles, state of California, as per e recorded in Book 4 Page 33 of Maps, in the office of the ty recorder of said county.

EL 2a; Lot 1 of the Holly Tract, in the city of Los Angeles, ty of Los Angeles, state of California, as per map recorded ook 3 Page 29 of Maps, in the office of the county recorder aid county.

EL 3; The north 21 feet of lot 8, and all of lots 9 and 10 and outh 174 feet of lot 11 in block 14 of Chapman Park Tract, e city of Los Angeles, county of Los Angeles, state of rnia, as per map recorded in book 8 page 54 of Maps, in the ce of the county recorder of said county.

EL 4; Lots 22 and 23 of Country Club Heights, in the city of Angeles, county of Los Angeles, state of California, as per map rded in book 6 page 56 of Maps, in the office of the county rder of said county.

EL 5; Lot 7 and the northerly 50 feet of lot 6 in block 1 ollywood Ocean View Tract, in the city of Los Angeles, county os Angeles, state of California, as per map recorded in book 1 62 of Maps, in the office of the county recorder of said county.

MEMO	
Paid outside of Escrow \$	100,000.00
Cash through Escrow	500,000.00
Unpaid Balance of Encumbrances of Record	
New Encumbrances	
Total Consideration	600,000.00

Defendants' Exhibit E (Continued)

Book _____ Page _____ of _____ records of said county.
TESTED IN: LYDA RICHMAN TIDWELL, a married woman as her sole and separate property

ANCES EXCEPT:
ment General and Special Taxes for the fiscal year 19 53, 19 54, including PERSONAL PROPERTY TAXES
owner AND ALSO INCLUDING ANY SPECIAL DISTRICT LEVIES, PAYMENT OF WHICH ARE INCLUDED THEREIN AND
WITH:

nts levied or assessed subsequent to date of these instructions.
reservations, covenants, easements, rights and rights of way, of record, if any.

Mutual Mortgage
Indebtedness of \$ 265,000.00 as per its terms, now of record the terms of which indebtedness and said trust
d hereby approve, no further approval necessary (see page two for amount of unpaid balance of principal) affecting
any Trust Deed which I have executed individually in favor of California Bank
~~covering any and/or all of the above described~~
property.

~~Bill of Sale executed by F. I. Richman and Lyda Tidwell, formerly known as~~
~~trustees under Declaration of Trust known as "Richman Trust, dated November 1, 1945~~
~~in Tidwell, a married woman as her sole and separate property and covering all~~
~~furnishings of the apartment buildings located on the above described properties.~~
~~whereon as one of the trustees constitutes my approval as Vendee of said Bill of~~

~~me an instrument or instruments of transfer to me covering all other and remain-~~
~~said Trust, the same to be approved by my attorney, Laurence B. Martin.~~
~~and to you for delivery to F. I. Richman at close of escrow a full and complete and~~
~~in favor of F. I. Richman and all other parties named as Defendants in the above~~
~~United States District Court Action when you can hold for me a full and complete release~~
~~executed by said Defendants. The form of these mutual releases is to be approved~~
~~by Laurence B. Martin and by Joseph T. Enright, attorney for F. I. Richman.~~
~~ing the printed provision in these instructions I agree to pay, in addition to the~~
~~and expenses in this escrow all of the caller's costs and expenses of this escrow.~~
~~of the policy of title insurance, revenue stamps and recording and filing all~~
~~nd documents and the seller's escrow fee.~~
~~sions are not intended to and do not amend, alter, modify or supersede any~~
~~side of escrow between F. I. Richman and me and with which agreement California~~
~~to be concerned.~~
~~you a Quitclaim Deed from my husband Albert Ray Tidwell covering the above described~~
~~ating sole and separate property in me.~~

LE INSURANCE CALLED FOR UNDER THESE INSTRUCTIONS MAY BE ISSUED FOR THE BENEFIT OF ALL PARTIES IN
BE PROCURED FROM ANY TITLE COMPANY OPERATING IN THE COUNTY WHERE THE PROPERTY IS LOCATED AND
TO EXCEPTIONS AND CONDITIONS CONTAINED IN SUCH COMPANY'S REGULAR PRINTED FORM INCLUDING BUT NOT
TO BE CONCERNED.

6. 23. Defendants in said United States District Court Action.

(b) Install electric locks to each hopper on every floor.

(c) Complete gas line to each dehydrating burner in existing incinerator, as well as gas line to unit.

(d) File applications covering Los Angeles County Air Pollution Control District permit.

(e) Equipment will be guaranteed as follows:

1. For a period of two (2) years from date of approval, against faulty material or workmanship.

2. To give complete operating satisfaction.

3. To conform to Los Angeles County Air Pollution Control District requirements for the next five (5) years—when operated according to our written instructions.

All materials used in construction described above will be new and of first quality. All labor to be performed by men experienced in incinerator construction.

Price quoted does not include labor and materials in the nature of maintenance or repairs to existing incinerator and stack.

A deposit of 10% of the above quoted amount required upon execution of contract, balance of which is payable upon receipt of the Los Angeles County Air Pollution Control District permit to operate.

Thanking you for the opportunity to submit this
petition, we are
Very truly yours,

Air Pollution Control, Inc.
P/db Hal B. Phillips

hereby accept the offer of the Air Pollution
Control, Inc. as outlined on pages one and two of
this quotation and agree to pay the sum of \$1,-
00 and upon execution of this contract we are
depositing a deposit of \$150.00.

Date: 10-23-53.

/s/ Richman Trust

/s/ By F. I. Richman, Owner Agent

Accepted by: Date 10-26-53.

Air Pollution Control, Inc.

/s/ By B. Manalis, V.P.

[Duplicate copy attached.]

E. Enright: The next, either by stipulation or
reference to the present court record, is the
Cromwell Smog Control permit, pertaining
to the Oxyaire Company. The permit was issued on
March 9, 1954.

E. Powsner: Is that permit in the record?

E. Enright: The physical document is not, but

files, the plaintiff's files. It was received through the mail.

Mr. Powsner: I will stipulate that that goes in evidence. I don't know what it says.

Mr. Enright: Will you locate it?

Mr. Powsner: Yes.

Mr. Enright: And the permit——

Mr. Powsner: Dated March 9th?

Mr. Enright: Yes. Likewise, there was a permit for the Canterbury, which I think is involved in your amounts here, and it was issued March 9th. Will you locate that?

Mr. Powsner: Yes.

Mr. Enright: And the same stipulation as to the going into evidence?

Mr. Powsner: Yes. We will stipulate that as to the dates. You have a right to put the documents in evidence, if you wish.

Mr. Enright: Stipulate they go into evidence.

Mr. Powsner: I haven't seen them. I don't know what the dates on them are.

Mr. Enright: That is all right.

(The documents referred to were marked as Defendants' Exhibit G and were received in evidence.)

AIR POLLUTION CONTROL DISTRICT
COUNTY OF LOS ANGELES

PERMIT

IS HEREBY GRANTED TO

OLIVER CROMWELL APARTMENT HOTEL - RICHMAN TRUST, DBA

TO OPERATE

TE-FED INCINERATOR, MODIFIED WITH A OXYAIRE U-UNIT WITH AFTERBURNER

LOCATED AT

418 South Normandie Avenue
Los Angeles 5, California

SUBJECT TO THE FOLLOWING CONDITIONS

N O N E

THIS DOES NOT AUTHORIZE THE EMISSION OF AIR CONTAMINANTS IN EXCESS OF THOSE ALLOWED BY
ARTICLE 2, ARTICLE 3, OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA OR THE RULES
AND ORDINANCES OF THE AIR POLLUTION CONTROL DISTRICT.
IT CANNOT BE CONSIDERED AS PERMISSION TO VIOLATE EXISTING LAWS, ORDINANCES, REGULATIONS
OR OTHER GOVERNMENTAL AGENCIES.

REVOCABLE AND NOT TRANSFERABLE

19, 1954
No. 8219

GORDON P. LARSON, DIRECTOR

By

POST NEAR OPERATING EQUIPMENT

Business Manager

76P238 10 83

424

AIR POLLUTION CONTROL DISTRICT
COUNTY OF LOS ANGELES

PERMIT

IS HEREBY GRANTED TO

CANTERBURY APARTMENTS

(JAMES M. UDALL, INCORPORATED, DBA)

TO OPERATE

FIVE FED INCINERATOR WITH TWO METTLER #4 RS GAS BURNERS
AND AN OXYAIRE U-UNIT WITH A METTLER #9 RS GAS BURNER

LOCATED AT

1746 North Cherokee Avenue
Los Angeles 28, California

SUBJECT TO THE FOLLOWING CONDITIONS

N O N E

THIS DOES NOT AUTHORIZE THE EMISSION OF AIR CONTAMINANTS IN EXCESS OF THOSE ALLOWED BY
ARTICLE 2, ARTICLE 3, OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA OR THE RULES
AND ORDINANCES OF THE AIR POLLUTION CONTROL DISTRICT.
IT CANNOT BE CONSIDERED AS PERMISSION TO VIOLATE EXISTING LAWS, ORDINANCES, REGULATIONS
OR OTHER GOVERNMENTAL AGENCIES.

DEPENDANTS' EXHIBIT G

DEPT
EX G

r. Enright: That would be the defendants', your [589] Honor.

he Court: What do you wish to put in?

r. Powsner: I think Mr. Enright has pretty covered the exhibits. The letters of February and 26th, constituting a contract, are part of record, are they not?

r. Enright: I would propose they be more nately made a part of the record, as an exhibit reference, to the objections by the defendant to Receiver's accounting. That is where they are ne record.

he Court: So ordered.

r. Enright: That would be Exhibit H. That ld be the two letters, one dated February 19, t, and the other dated February 25, 1954.

r. Powsner: Those are the letters made ex-ts in your first objections?

r. Enright: My objections, defendants' ob-ions.

(The documents referred to were marked De-fendants' Exhibit H and were received in evi-dence.)

[Printer's Note: Defendants' Exhibit H, two letters, one dated Feb. 19, 1954, and the other Feb. 25, 154, attached to Defendants' Objec-tions, set out at pages 139-144 of this record.]

r. Powsner: I have nothing more to offer in

be some more stipulations which could possibly reached here and now. [590]

The Court: All right.

Mr. Powsner: The amounts in connection with Mr. Richman's claims. We could stipulate that the cash fund was \$785.00.

Mr. Enright: I had assumed that had been stipulated to.

The Court: The parties both have treated it as that amount.

Mr. Powsner: I don't know the state of your knowledge concerning the rents which you claim were collected by Mr. Hallberg, which were January rents and which were turned over to Mr. Tidwell's agents.

I have information from Mr. Udall setting out the precise amounts which are February rents, which Mr. Richman should have correct information, and that those amounts, or, the total is \$1,290.59, but \$1,300.28, and that is divided up as follows:—

Mr. Enright: We will not accept the greater amount.

Mr. Powsner: That greater amount, I am standing to point out to you of what it is made up.

Mr. Enright: I would stand on the \$1,290.59. I know how you got your \$1,300.28. It is a pro rata basis, and we do not agree to a proration. It is stated in Mr. Camusi's letter of March 30th.

. Powsner: In other words, we are at issue those amounts?

. Enright: I will agree you could offer evidence it was \$1,300.28, if you so desire. We say the amount is \$1,290.59.

. Powsner: There is some confusion as to what we are talking about here. When I mentioned 0.28 I referred to a total which, it is our position you have mistakenly assumed is entirely February rents. It is our position that only \$424.34 of that amount is February rents.

. Enright: I cannot so stipulate.

. Powsner: Then we could stipulate that the defendant's fees for November, of \$3,104.13, have not been paid?

. Enright: I will accept that stipulation.

. Powsner: That is all I can propose, your Honor.

The Court: Well, it seems that you still have some fact issues, as to which evidence will be necessary, unless you get together on stipulations which look too hopeful. Perhaps by July 6th you may have worked out your stipulation. If you have worked out further stipulation the court will give you a date for taking the evidence.

. Enright: Your Honor, before we do become involved in what could be a trial lasting, I would maybe two days, there is a point of law that

The \$58.80 item on the smog equipment I will forfeit rather than go to trial on, leaving only the question of rents.

Now, the point of law I make is this: There has been received in evidence by stipulation already the escrow instructions. They have been received in evidence, the February 19th offer from the defendant to the plaintiff, and February 25, 1954 acceptance by the plaintiff of the defendant's offer.

The Court: And the release.

Mr. Enright: And the release. Now, my point is this: That the escrow instructions specifically provide there be no proration of rents if the court is to rule upon that written instrument, three documents constituting the instrument, or, if they were the two letters, the offer and acceptance. The printed evidence is not admissible, I don't think. I am satisfied it isn't.

At least in my own mind there is no issue of proration remaining, because the escrow instructions are clear that there be no proration of rents.

I have it here, if you care to read it. And I have in mind the specific provision on page 2 of the escrow instructions, "The Following Adjustments Only Required In This Escrow:" [593]

When it comes to rents there is "None."

The typewritten portion of the escrow specifically provides, on the first page:

"Notwithstanding the printed provision in the

of the policy of title insurance, revenue stamps recording and filing all instruments and documents and the seller's escrow fee.

These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and the bank and with which agreement the California Bank is to be concerned."

The point is this, your Honor: The February 19, 1954 letter, offer, provided for an escrow, contemplated an escrow.

The February 25, 1954 acceptance accepted the offer as it was written. Somehow we might logically conclude there is uncertainty as to the meaning of the offer and acceptance.

But if there is uncertainty, that uncertainty was completely cured and perfected by the written escrow instructions that I have just read, or the whole of the written instructions, if one wants to add all of them. [594]

Now then, if the plaintiff here expressly in writing agreed that there be no proration of rents, and the rents were to remain in the hands of the Receiver until 5:00 p.m. February 28th, and the plaintiff agreed to receive the rents commencing March 1st, the escrow instructions specifically provide for no proration of any kind. The escrow instructions specifically provide——

provide, "The Following Adjustments Only Are required In This Escrow:"

It then goes on and enumerates taxes and various other items, and after each and every one the word "None" is printed in as follows: "None," N-o-n-e.

My point is this: That it is a question of law for the court to determine from the instruments themselves as to whether there is any proration of real estate taxes.

If the court determines in the defendant's favor, then there is no occasion to stipulate. I am merely stating here, to avoid the necessity of going to the jury on fact which I will object to, or evidence pertaining to fact, which I will object to, as being an attempt to vary the terms of the written agreement.

The Court: The court sustains your objection. I think [595] parol evidence takes care of it, parol evidence rule, I mean.

Mr. Enright: Yes.

Mr. Powsner: May I say, in connection with Mr. Enright's objection to the introduction of evidence, I think there is no question of parol evidence being introduced to modify the original escrow instructions. The escrow instructions specifically provide: "These instructions are not intended to and do not amend, alter, modify or supersede any agreement made outside of escrow between F. I. Richman and Mrs. Tidwell."

Obviously, that provision does refer to agreements, the outgrowth of escrow, and would refer to the same in relation to the same.

most accurately show that escrow instructions in their interpretation, subordinated to a written contract by which they are arrived at.

The Court: Are you contending there was a written contract which provided for proration?

Mr. Powsner: That is correct.

The Court: I will set aside the ruling and examine the evidence and see if it includes such a contract.

Mr. Enright: Yes. In other words, the court will examine the two letters and then examine the escrow instructions and then rule—— [596]

The Court: Yes.

Mr. Powsner: Subject, your Honor, of course, to the arguments as to the meaning of that contract?

The Court: Yes. That will be one of the subjects that is to be argued here on the 6th.

Mr. Powsner: Yes. As I understand, your Honor is not going to make the requested ruling at this time now, but just to answer Mr. Enright, the point is that the instructions do refer to the prior contracts and says it is not intended to supersede them, but the authorities submitted point out, not only that the escrow instructions supersede the contracts, but it is definitely subordinate in its meaning and interpretation to the former contract.

The Court: Yes.

Mr. Powsner: Which former contract, at least

be construed most strongly against Mr. Richman.

I want to answer Mr. Enright, to point out to the authorities show—and I don't think Mr. Enright has submitted any authorities to counter against this—it is our contention the authorities do show that the contract contained in the letters of February 19th and February 25th prevail over contradictory provisions in these escrow instructions.

And in construing that contract, to see if it contains [597] provisions to prevail over the provisions of the escrow instructions, that that contract must be construed most strongly against Mr. Richman.

Mr. Enright: Are you through?

Mr. Powsner: Yes.

Mr. Enright: My point was that I invited the ruling by the court interpreting and construing the letters and the escrow instructions, or without the escrow instructions, and if the ruling were favorable to the defendant there would be no occasion for our issue of fact.

I am willing to stand on the very authority to which I refer particularly—and I quote from their own memorandum:

“In *Pigg vs. Kelley*, 92 Cal. App. 329, it was held that where a written agreement of sale and escrow instructions connected therewith show by their terms that they refer to the same sale, the two instruments must be construed together under Civil Code 1642 to ascertain the whole contract between the parties.”

am attempting to avoid an issue of fact. I will
favor to stipulate and will meet at counsel's
convenience any time between now and July 1st.

r. Powsner: Yes, we have stipulated to that.

r. Enright: Any other evidence? [598]

r. Powsner: No other evidence that I have.

I to understand you are abandoning your re-
quest for a ruling at the present time?

r. Enright: No. I am still requesting it. I un-
derstand the court——

The Court: I understand he is still requesting
I don't want to rule precipitously, until I have
an opportunity to reflect on it.

r. Powsner: May I request then it be made
along with the other issues in the case, after briefs
and memorandum are submitted by us, or oral argu-
ment or introduction of evidence, depending on
the agreement we reach?

The Court: It would have to be made before the
case is closed. It might be a ruling which would
prevent the introduction of evidence. It might be a
ruling which would foreclose some evidence you
might wish to offer. I will have to make it before
the case is concluded.

r. Powsner: Your Honor is now referring to
the ruling as to the legal effect of the escrow instruc-
tions and the written contract?

The Court: But you haven't stipulated as to legal [599] effect of the instruments themselves.

Mr. Powsner: That is right. I would want to include those issues in any further argument memoranda or brief to be made.

The Court: You may do so. And that is what we will rule on before the case is closed. I will hear you on July 6th at 9:00 o'clock or receive your briefs on those points, and we will have given you some matter some study, so that I can possibly let you know immediately.

Mr. Enright: May I comment that if the court does find a few moments' time—and I know time is pressing—then we might avoid our question of fact as to this \$4,499.29 February rents they collected they collected.

The Court: Yes.

Mr. Powsner: I don't mean to be insistent. I don't want to misunderstand. In other words, your Honor is not going to make that legal ruling before giving us a chance for further argument on that legal point?

The Court: Not at all. Not at all. It is going to be argued before it is decided.

Mr. Powsner: One other confusion I have. Assuming we cannot get together and completely dispose of the case by stipulation, plus written memorandum, and assuming that I understand that situation that will take place July 6th will sim-

e Court: On July 6th we will hear argument
is particular question.

. Powsner: I see.

. Enright: I don't know what you want to
about this envelope. I believe if they could be
back, I am quite sure I can demonstrate to

e Court: You think it is a matter that can
disposed of by stipulation?

. Powsner: I think we ought to have these
we discuss the matter.

e Court: Yes.

. Enright: This transcript will be written up
we will have the benefit of it for further
ng.

e Court: That is my understanding.

. Powsner: Yes, I am requesting that it be
en up at the present time.

. Enright: I can't propose anything else, your
r, to close this matter.

e Court: Well, I wish you luck in your dis-
ons.

. Enright: Thank you.

. Powsner: Thank you.

(Whereupon, at 2:55 o'clock p.m., Monday,
June 21, 1954, the hearing in the above-entitled
matter was adjourned.) * * * * * [601]

ject of settlement of the trustee's account or, rather, the Receiver's account. Is that right?

Mr. Camusi: Yes, that is right.

Mr. Enright: As I understand the matter, Honor.

The Court: Who wants to make the first argument or be first in the making of the final argument?

Mr. Enright: I will be glad to be heard, Honor.

The Court: All right.

Mr. Whyte: Might I request the court's indulgence before we begin?

I believe this session today has to do with the adjustment of the accounts between Mrs. Tidwell and Mr. Richman. The argument with respect to the Receiver's report and the fees have already been argued.

Might I inquire of the court what I should say about these bills again?

There is a bill in the sum of \$89.20 to the porter on account of copies of the Receiver's deposition and of my deposition taken by Mr. Richman.

There is also a bill in the sum of \$100.00 as a fee [603] for the expert witness, who testified to the reasonable value of Mr. Hallberg's services.

Would the court care to instruct as to what disposition should be made of those bills?

The Court: Yes. The court should instruct

e Court: You might just file the bills with the
here, and he can give them exhibit numbers.

. Whyte: Would either counsel like to see
?

. Enright: Yes. Not at this time.

e Court: My offhand feeling is that the re-
has finished paying bills, as such, and that
are more in the nature of costs, but I want
answer, and I won't know until the books are
available.

. Whyte: Very well, your Honor.

e Court: I am somewhat surprised to see you
since the argument has been made upon your
and those of your client, and I don't think it
necessary for you to remain. I assume you are
to ask permission——

. Whyte: Yes, I was going to ask if I might
reused, unless the court would request me to
in.

e Court: You are very welcome, but since all
ers concerning your petition and those of your
have been [604] argued, insofar as they refer
those parties, your further attendance is not
red.

. Whyte: That is just fine, your Honor.
k you.

(Whereupon Mr. Whyte retired from the
courtroom.)

Enright: May it please the court: On the

in evidence, on behalf of the defendant, Mr. Richman, I objected to the introduction of certain evidence on the part of the plaintiff pertaining to proration and pertaining, for example, to the escrow expenses or the Revenue stamps.

My objection was stated in the transcript shown for that day, and on page 25, after the court had sustained my objection, the plaintiff's counsel argued that they had further argument or evidence to support their position that there be a proration and at line 18 the court stated:

"The Court: Are you contending there was no written contract which provided for proration?"

"Mr. Powsner: That is correct."

Now, with those simple preliminaries I am going to say we are back to the basic proposition as to whether or not the February 19th offer of settlement and the February 25th acceptance, being Exhibit H, constituted a contract. [605]

I am sure there was no dispute in anyone's mind that that did constitute a settlement agreement.

Now, the next question is whether or not that agreement, composed of the two letters, provided for proration of taxes, rents, payment of escrow expenses, the revenue stamps to be put on the seller's deed, Mr. Richman's deed, and it is our position to stand that the statement is clear and does not provide for those payments.

Now, assuming that the agreement is ambiguous

s of that agreement eliminate any possibility of
ate.

ow, we both submitted our memorandum or our
ments, and the plaintiff herself cited two or
e cases which showed definitely that the written
ement and the escrow instructions were to be
together. The escrow instructions clarify it, if
e was any uncertainty in the written agreement.

ow, since then, and over this week end, I ran
ss a very recent District Court of Appeals de-
n, a California District Court of Appeals deci-

It is *Leiter vs. Handelsman*, decided May 7,
, reported at 270 Pac. 2d. 563. It involved a
ten agreement for the sale of a lot on which
parties contemplated constructing a super-
ket, or [606] a market of substantial value, I
x of some \$30,000 and it also involved escrow
uctions. Now, on appeal this is what the Ap-
te Court said, quoting on page 567:

There are two instruments involved here, the
ement of purchase, and the escrow instructions.
re the terms of an executory agreement for
sale of real property are clarified by the pro-
ns of signed escrow instructions, those instru-
ts are to be considered together in determining
understanding of the parties and in ascertaining
e rights and obligations."

Stemis vs. Westerlind, a citation, and *Keelan vs.*

directions to carry into effect an executory agreement. King vs. Stanley, supra.

“The agreement of purchase provided that ‘Time is of the essence of this contract, but the time for any act required to be done may be extended for a longer than thirty days by the undersigned agent.’ The escrow instructions contained the following: ‘In the event that the conditions of this escrow have not been complied with at the expiration of the time provided for herein, [607] you are instructed to complete the same at the earliest date possible thereafter, unless we or either of us shall have made written demand upon you for the return of the money or instruments deposited by either of us; in which case you are instructed to return the instruments and/or cash to the respective parties hereto. * * *’ ”

I ask that we not confuse the facts that are in issue, that time is the essence, as the issue here is the payment of the proration of taxes, proration of rents, payment of escrow expenses, because the same principle of law applies to both sets of facts.

Again, I point out that the court said the principle of law is that you read the agreement and the escrow instructions together if the agreement needs clarification, and this is what the Appellate Court has said at page 567, in determining this point.

“Assuming, nevertheless, but not necessarily

What is our exact position here in this case. Assuming that the written agreement was not clear providing that there were to be no proration on these items, we next come to the escrow instructions, just as this trial court did, [608] and this Appellate Court did.

When the Appellate Court said, in deciding that position, and I quote again from page 567, and referring to the facts here, I quote:

"The right to make written demand for return of the money or instruments was an integral clear unequivocal clause in the instructions. Even if it was not of the essence, and even if it could be found that there had been a waiver of the pre-time of performance, nowhere has it been suggested in the evidence or in argument that respondents waived their right to make written demand for return of their money after the 30-day escrow period concluded. Were they to be denied that right, the court in effect would be altering the express terms of the contract. Neither a trial nor appellate court has the power to rewrite a contract."

Now, let us examine what these parties agreed on in their escrow instructions, assuming but not conceding that there is ambiguity in the February 1st and 25th original letters constituting the settlement agreement.

The escrow instructions are before the court as

ment. One part of the insert type written provision is:

“Also hold for me Bill of Sale executed by F. I. Richman and Lyda Tidwell, formerly known as Lyda Nagel, Trustees under Declaration of Trust known as ‘Richman Trust’, dated November 1945, to Lyda Richman Tidwell, a married woman as her sole and separate property and covering furniture and furnishings for apartment building located on the above-described properties. My nature thereon as one of the trustees constitute my approval as vendee of said Bill of Sale.

“Also hold for me an instrument or instrument of transfer to me covering all other and remaining assets of said Trust, the same to be approved by my attorney, Laurence B. Martin. I will also hand you for delivery to F. I. Richman at close of escrow a full and complete and general release in favor of F. I. Richman and all other parties named as Defendants in the above entitled United States District Court Action when you can hold for a full and complete release in my favor executed by said [610] Defendants. The form of these actual releases is to be approved by my attorney, Laurence B. Martin and by Joseph T. Enright, attorney for F. I. Richman. Notwithstanding the printed provision in these instructions, I agree to pay, in addition to the buyer's costs and expenses in this agency, all of the seller's costs and expenses

struments and documents and the seller's escrow fee.

These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and the bank with which agreement California Bank is to be concerned.

I will hand you a Quitclaim Deed from my husband, Albert Ray Tidwell, covering the above described property creating sole and separate property in me."

Now, that is the typewritten insertion in this escrow instruction, Exhibit F, and it specifically provides, "in addition to the buyer's costs and expenses in this escrow all of the seller's costs and expenses of this escrow and the cost of the policy of fire insurance, revenue stamps, [611] and recording and filing all instruments and documents and the seller's escrow fee" are to be paid by Lyda Tidwell.

Now they come in here and they ask us, or they want to charge us for the whole of the revenue stamps and the escrow fee, and I suppose half of the other items.

In other words, there is no uncertainty in these new instructions.

They will continue on on the proposition of the pro-

“The following adjustments only are required under this escrow.”

Specifically, there are to be no adjustments, specifically, it provides no proration of taxes and no proration of rents.

Now, this paragraph typed into the escrow instructions above the signature of Mr. Richman is significant, and I read it in its entirety. It is added to the printed portion:

“Notwithstanding any of the printed provisions herein, I, the undersigned, F. I. Richman, agree to be at any expense under this escrow.” Now I stand firmly upon the ruling that your Honor [made] on June 21st, when your Honor sustained my objection to the introduction of parol evidence tending to show what the amount of dollars would be on a proration of the taxes.

If there is any uncertainty in the written contract, which is received in evidence as Exhibits being the two letters, it was clarified. It was not modified. It was not amended, or it was not in any manner changed by the escrow instructions.

Therefore, when Paragraph 4 of the offer of F. I. Richman, which was made on February 19th, is to be considered, especially when it is to be considered under these circumstances, as stated in the third paragraph of the letter, and I quote the third paragraph, the letter being addressed to Martin:

ment made contemplates a full release of any all claims that either Mr. Richman or Mrs. ell have or think they have against the other the beginning of the world to the present time. is matter is going to be terminated, it is my e to have it terminated completely and not by of trick terminology which might subject it ner lawsuits in the future.” [613]

w, the proposed settlement was in paragraph
where this dispute now apparently arises,
which we say is completely clarified by the
w instructions. It is as follows:

stipulation shall be entered into that the Receiver be relieved as of February 28, 1954, and thereafter the Receiver shall be entitled to all receipts and assume all operating obligations of the Richfield Trust from March 1, 1954, on or until the removal of a receiver as might occur under the provisions hereof."

the next paragraph, and apparently they claim
ambiguous, because otherwise I don't know
they are asking us for these large balances,
:

the Receiver shall file his report and after the payment and/or provision for all of the Receiver's debts and expenses and operating obligations of the Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs.

what does the term "operating obligations" mean? I know from my own experience in utility cases before the California [614] Public Utilities Commission operating obligations for utility purposes include taxes.

As to what it means between two businesses or a businesslady and a businessman, the lady being represented by attorneys and advisors, and so forth, there is no certainty in the law or in the cases at place, that when that same party signs an escrow instruction two or three days later, which specifically provides, "The following adjustments are required in this escrow," and when it comes down to taxes and when it comes down to rent, maybe I had better read it concerning taxes:

"Prorate taxes, including all items appearing on tax bill except taxes on personal property not conveyed through this escrow, to None."

"Prorate rentals on basis of statement approved by me, to None."

I submit, your Honor, there should be no argument on the proposition; that we have in our trial memorandum, dated June 16, 1954, and I could call that one to your Honor's attention when you have to deliberate on this matter, June 16, 1954, page 9, which is an exact accounting, and which I am sure is correct, and I think your Honor should sustain our objection to the introduction of claim for revenue stamps, escrow instructions and

r. Camusi: Aren't you going to comment, or that mean you have conceded the point of the that have been claimed?

e Court: When this matter was set for argu- today, everybody said it could be done in a few tes. You have already taken about 25 minutes. ce it he is relying on his memorandum.

r. Enright: I am not conceding those amounts l.

r. Camusi: O.K.

r. Enright: I don't think that I have anything er to add.

(Another case called.)

r. Camusi: Your Honor, in this case we start with this offer letter of February 19, 1954, and,

r. Enright states, there is no question that we alifiedly accepted that. And Mr. Enright states creates a contract. There is no question that ad a contract providing for the settlement, and ltimate complete, final disposal of this case.

w, what did they say in that contract? The first point is that there should be mutual re- s from the beginning of the world to the pres- ime.

e second point is that both parties shall bear [616] own expenses.

w, we are the offerees, and we are entitled to that at its face value, that those parties shall

this situation, why should we all of a sudden be liable for Mr. Richman's expenses.

Now, the paragraph on mutual dismissals is the third point. We gave those.

Paragraph four is:

“A stipulation shall be entered into that the Receiver be relieved as of February 28, 1954, and whenever he buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 * * *

Now, we have a right to take that to mean that when March 1st comes around, when we took possession under this agreement, we were entitled to all of the receipts of moneys, as we were entitled and obligated to pay all of the obligations of the trust, beginning March 1, 1954.

Now, I don't think there is any question that the property taxes in a trust which is concerned with the rental of apartment houses is anything but an operating expense or obligation, and I have cited the case on that point in my [617] memorandum.

Then in paragraph five I think it goes further to state that:

“The Receiver shall file his report and after payment and/or provision”—in other words, the Receiver might not have paid it, but let's make provision for those payments, if he hasn't done so. That is the way I take this to mean. —“the

t to February 28, 1954, any funds remaining
be divided equally * * * "

w, Mr. Enright states, and I think that pos-
this is where the nub of the contention is con-
ed, he says there is nothing in this contract on
ation, and, therefore, there isn't any prora-
and then you get to your escrow instructions,
that nails it down, but that isn't the case.

ere are authorities directly in point on that
ion. King vs. Stanley, 32 Cal. 2d—I might say
I not cite this, or, rather, I may have, but I
not do more than cite it. It is King vs. Stanley,
al. 2d. 584, and there it is stated:

* * Equity does not require that all the
s [618] and conditions of the proposed agree-
be set forth in the contract. Though usual and
onable conditions of such a contract are, in the
emplation of the parties, a part of their agree-
."

ow, here is our position as to the taxes, as to
e proration: I think it is set out right in para-
h four here just how it is to be handled. We
o get the receipts for the month of March.

ne Court: Paragraph 4 of your settlement
ement?

r. Camusi: Of the offer letter. I think that
it out, and it also sets out we are responsible
operating obligations from March 1st.

tract are in contemplation of the parties a part of their agreement, and then says:

“In the absence of express conditions, custom and usage terminates incidental matters relating to the operation of an escrow, furnishing deeds, title insurance policies, prorating of taxes, and the like.”

Mr. Enright: Will you give me that citation?

Mr. Camusi: That is 32 Cal. 2d 584, and cited in other cases. [619]

In that case the defendant contended that the escrow instructions did not follow the alleged contract obligations but included different terms which had not been accepted by her. In other words, the original contract, your Honor, in that case could not provide, I believe, for her to pay the policy of title insurance, or some of those incidental things which would arise, and the court said:

“The escrow instructions were merely customary and expected directions to the escrow company to carry into effect the executory agreement. Such instructions do not take the place of the agreement of sale, but merely carry it into effect.”

In other words, it was necessary, in order to carry this contract into an executed status, to go into escrow, both sides realized that, and as soon as they accepted this offer unconditionally, both parties were willing this matter go into escrow.

Now, that escrow was just a mechanical device whereby both parties could carry out their in-

certainly, having accepted that, we are not going into escrow and change that contract, and give something they had not bargained for in their contract, unless your Honor believes we did something wrong to change [620] this original contract.

Now, in *O'Donnell vs. Lutter*—and I believe this is a new case, your Honor, *O'Donnell vs. Lutter*, 68 App. 2d 376, the court says that in these contracts of sale there is an implied provision of taxes and rent.

Now, if that case is right, and I think it is, when you look at this agreement, if it does not say so once, and I think it does,—but assuming this contract of Mr. Enright's did not say so on its face, then it is an implied condition of this contract that we will prorate taxes and rent.

Now, we get into escrow, and it is true the escrow instructions and statements attributed to it are by Mr. Enright, but they all say in effect, and recite the substance of what is provided in print in this escrow instructions, you will do it this way in this escrow. Now, how are we going to ignore the express language of the escrow instructions, which state:

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and —meaning Mrs. Tidwell—"and with which the California Bank is not to be concerned."

vehicle by which we can carry our agreement to completion.

So it is our contention that the meaning of the contract goes right back to the offer letter of Enright, and since we paid approximately the same amount as set forth, close to \$5,000.00 in taxes for the first two months of the year, January and February, it is our contention that those expenses for operating obligations and should be shared equally by the parties. What happened was we had to pay them all, and Mrs. Tidwell paid all of those out of her own pocket.

I think that answers the argument on the taxes, and it also answers the argument on the prorated taxes. It answers the argument on the seller's escrow expenses. Why should we pay Mr. Richman's expenses when the agreement specifically states that each party is to bear his own, and, further, when it is an implied condition of the contract that the seller pays his escrow expenses.

It also answers the question of the revenue stamps.

Incidentally, there are two acts involved with the question of the stamps on a deed. The last one is the Act of February 24, 1919, 40 U.S. Stats. 1.

The court at 15 Cal. Jur. 2d., Section 1777, in *Cole vs. Ralph*, 252 U.S. 286, 240 Supreme Ct. 221, stated [622] that the earlier Act contained language making the deed void, and that a deed would be inadmissible in evidence if it did not have

Government cannot tell us what is or what is legal conveyance in this State, and the conveyance is legal, but there is still a fine and a criminal action, as well as civil, against the party for failure to put stamps on the deed. That is an obligation by custom, as well as by law, on the seller, why should we pay for the revenue stamps, and should we pay the expenses that are attributed to the seller?

In the other case which states that these usual and reasonable terms are in contemplation of the parties, a part of such contract is *Janssen vs. Davis*, 219 N. 83, at page 788.

Now, on the question of proration, I was not present, but I read the transcript of the proceedings had on this question, and Mr. Enright stated he was willing to stipulate that the Receiver had collected \$1,290.00, or, rather, that Mr. Udall, Mrs. Udall's representative, had turned over to him the sum of \$1,290.59, which represented rents which had been collected near the end of the month of January, and turned over to the plaintiff in this case. [623]

Now, this point was not made, your Honor, but in our contention that of that sum, anyway, only \$34 was February rents, and if the court believe that a proration is the proper thing in this case, I think a sub-accounting should be had to

paid, so that in that sense it can be seen that during the month of February certain rents were collected which were properly for the month of March. I would like to offer those into evidence, together with these utility bills.

I noticed in the transcript that Mr. Enright we might introduce the utility bills into evidence and I offer those exhibits at this time.

Mr. Enright: To which objection is made upon the grounds heretofore argued, and heretofore sustained, and if such documents are received in evidence of necessity there will be created an issue as follows:

Concerning the real-property taxes, which are claimed to be some \$4,000.00, if proration is to occur, of necessity there will have to be proration of the personal-property tax claims paid by Mr. Roman on personal property on a much larger sum.

Second, as to the rents received by the manager before [624] March 1st, which under the court order were to go to the Receiver, and which in fact were picked up by Mr. James Udall, there is no dispute in the evidence concerning those, in the amount of \$1,290.59, it can be prorated, and then, of necessity you must look into the rents, the delinquent rents that were collected in March, because if we are going to prorate, we will have to prorate both ways to be equitable and fair.

Thirdly, if we are to prorate utility bills, to

urtherly, it shows right upon its face that they attempting to charge Mr. Richman with long-distance phone calls, and similar charges.

so, I submit that the tenants pay when they receive their bill for their month's rent, and they would have been paid in March.

And there are a lot of details of questions of fact, and if we are going to entertain some implied covenant to prorate, or some implied custom to prorate, and we have this express contract, I submit that if we try the matter we will take at least a number of days to hear it.

The Court: Sustained. Just a moment.

(Another case called.)

The Court: Proceed.

Mr. Camusi: I don't know what that ruling means. If [625] it means your Honor does not care to take evidence at this time, and you are to decide whether accounting should be had, that is perfectly agreeable to us, but I hope it does not mean your Honor has ruled before I shall have made my argument as to what the law is on this issue in the case.

The Court: If on the main contention I should immediately decide you are right, we will refer the whole question to a Master for the taking of evidence.

Mr. Camusi: I see.

The Court: But I think at this time that you are

against your contention, although that is tentative.

Mr. Camusi: I would like to call the court's attention to this, that when a person makes an offer saying that the offeree must assume all operating obligations from March 1st, certainly the offer must be interpreted, if it is capable of two interpretations, must be given that favorable to the offeror since the offeror has chosen the language.

It is difficult for me, looking at this offer, to see how we can be held solely responsible for taxes, and how we should personally assume obligations which occurred [626] prior to March 1, 1954.

That is the point I am making, and that is that these obligations had occurred prior to March 1, 1954, and they were operating expenses and obligations in prior months.

Now, with respect to the petty-cash fund, that was a trust. Again looking at the offer, we purchased in effect, all of the rights, title and interest of Mr. Richman in and to the assets of this trust. One of the assets was the petty-cash fund. That does not even fit into Paragraphs 4 and 5. It is not an obligation of the trust. It is not a receipt. It is an asset that is used for all purposes, as any petty-cash fund is. There is nothing special about the petty-cash fund. We purchased that, and now Mr. Richman wants half of that.

The question also arises as to this fee Mr. Richman has been claiming. This was a fee for November

ze there was a judgment of record, and unless a trial had been granted, or the judgment had reversed on appeal, that judgment would be final. That judgment voided the trust, cancelled it, and there was a finding that the fees of the lawyer had been excessive, and then I believe the court made a finding that six per cent would have been a reasonable fee. [627]

Looking at that as the background here, we had a situation where, had that judgment remained intact, we would have had a good claim on Mr. Rich-
for that additional four per cent charged Mrs. Tyrell over a period of some years, amounting to good many thousands of dollars. Now, we read—

the Court: I am sure that you would.

Mr. Camusi: How was that?

the Court: This trust was not void, but voidable—and when she coasted along with it for years, and paid part of the burden, wouldn't she have accepted it until a certain period of time? Just to get away from having laches run against her, wouldn't she find herself with what she accepted?

Mr. Camusi: That isn't what I read in the cases. The court held if the fees were excessive at the cancellation of the trust, she would have a return of the excessive fees.

dently, he is relying on Paragraph 5, so let's devote our attention to that:

"The Receiver shall file his report and after payment and/or provision for all of the Receiver's claims and expenses and operating obligations *"

It does not talk about Mr. Richman, and under the first paragraph, if we have to pay this, it is a personal obligation that is owed by Mrs. Tidwell to Mr. Richman, and yet both parties have mutually released each other of any claims.

To my mind it is inconceivable, under the wording of this offer, that Mr. Richman should be paid one-half of the fee which he had been charging for all of those years, and which this court held to be an excessive fee.

Now, I would like to say this to the court about that mortgage payment. I satisfied myself that this is actually an obligation paid by the Receiver in the month of March, and in line with my agreement on what is right, I am willing to stipulate here that that should have come out of their joint funds, or, rather, that should be paid by Mrs. Tidwell individually rather than coming out of the joint fund.

Apparently I am not going to get any stipulations in the other direction, however, favoring

There again the Receiver paid that. We are taking technical advantage of that. If it is an obligation that becomes due March 1st, all right,

offer as made by Mr. Enright, and provision
d be made for those out of this fund, so that
Mrs. Tidwell does not pay the 100 per cent
f her own separate funds.

Enright: May I address the court briefly,
e, in closing, with the statement that whereas
2,000.00 should be charged to Mrs. Tidwell,
certainly, is not going to obtain any admis-
from me that that \$750.00 petty-cash fund
d not be charged to Mrs. Tidwell. It should
arged against her.

i remember, your Honor, we introduced in
nce as one of the exhibits to this pretrial, the
ation of February 26, 1954, which evidences
gnature of both attorneys, and the order made
our Honor on February 26, 1954, to finally
this matter up, and it very clearly spells out
Receiver is to retain the money in the bank
his control. He had five managers out there,
that money was under his control, and when
James Udall is going out and picking it up on
nday morning, that is not going to obtain a
ation from me that we should split with any-

w, your Honor's ruling, I think, disposes of
ontentions made by the plaintiff here, that is,
they are not permitted to come in here by
tatement and now the terms of their written

again I [630] refer to page 8 of my memorandum which contains the accounting.

I might refer, briefly, to page 9, to Mr. Enright's \$3,104.00 fee, under the written contract which the court held was voidable, and that is included in the Receiver's report, there being no claim of that charge, and our charge is against the Receiver, so we did not want to go through the circuitry of prosecuting the claim against the Receiver, and then back out against the other parties.

We will submit the matter.

The Court: The court will have to go through all these memoranda. I had gone away after the last hearing and had not given *Tidwell vs. Rich* any great attention. I had expected, being the lawyers you are, that you would cut across the legal issues and get this matter settled. But since you haven't, the matters are pretty well set out in the legal memoranda, and I will take it under advisement and give you a decision rather quickly, at least, as quickly as I can.

That disposes of our 9:00 o'clock calendar.

(Another case called.)

Mr. Enright: May I address the court?

The Court: Yes.

Mr. Enright: I thought it might be a convenience to the court if I left the advance opinion in the *Leiter* case. [631]

The Court: Surely.

cludes most of the citations, and it is the memorandum of points and authorities of plaintiff regarding pretrial hearing on distribution of funds, was filed by plaintiff June 16, 1954.

the Court: Very well. [632]

* *

Los Angeles, Tuesday, Oct. 12, 1954, 9:30 a.m.

the Court: We are on the record, but in a sense in that this is not a proceeding in open court, my law clerk reported to me one day last week he had heard from Mr. Whyte, and Mr. Whyte very emphatically dissatisfied with the fee which the court awarded him.

he wanted to know by what process it might be brought to my attention, and the law clerk reported he told him it would be brought to my attention by his coming in and telling me.

indicated at that time a willingness to have the matter presented either formally or informally. Counsel being of the view that they wished to proceed informally, we are here informally upon informal notice, but Mr. Richman is present personally, and Mr. Enright is here and Mr. Camusi is here. Mrs. Tidwell is not here. Mr. Whyte is here.

Mr. Whyte: Mr. Hallberg is ill at home with a back. Otherwise, he would have been here.

the Court: Well now, what do you want to urge?

Mr. Whyte: I propose to examine the amount of

If I might circulate [634] these breakdowns of hours devoted among the court and counsel.

Mr. Enright: May I inquire, is this some evidence or additional evidence being presented?

Mr. Whyte: No.

The Court: No, this is just an informal conference, Mr. Enright. If it comes to a point of taking evidence, we will adjourn to the court to take it there. So if you want to offer evidence, as evidence, let us know and we will proceed that way.

As it is, I am simply holding a conference between disgruntled litigants, who are disgruntled with the court today. They used to be disgruntled only with each other.

Mr. Whyte: If the court will note from the first page of the original petition for allowance of fees, it covered services to and including March 17, 1911. It showed a total of 91 hours of attorney's time.

Quite a point was made in court by Mr. Enright of the fact that I accompanied Mr. Hallberg in the collection of rents from apartment house manager before his bond was approved.

My time slip for that day shows six hours being expended, not only the collection of rents with Mr. Hallberg, but accompanying him to the Union Trust Bank to open a new account in the name of E. J. Hallberg as Receiver. I propose that six hours be deducted [635] from the 91-hour total shown in the original petition, so there may be no question about the balance.

the supplemental petition for fees covered serv-
to and including May 10th. It showed a total
3.4 hours of attorney's time, of which eight
s was allocable to services performed in con-
on with the defense of the Receiver's attorney
ast Mr. Richman's objections to the allowance
eir fees.

asmuch as the services rendered in defending
ttorneys against the objections made to their
are not compensable, I have deducted the
hours from the total of 28.4 hours shown in
upplemental petition and placed in the right-
margin the figure of 20.4 hours.

will briefly run through my time slips since the
lemental petition was filed. May 11th. My time
show five hours devoted to the following serv-
Telephone call from Receiver re evidence to
esented at May 12th hearing; figuring break-
a of hours of attorneys' time for inclusion in
lemental petition for fees to Receiver's at-
eys;

udying Hallberg's deposition; conference with
erson Mann in preparation for his direct testi-
as to reasonable value of Receiver's services;
ctating and revising draft of hypothetical ques-
to Mann as an expert witness as to the value
Receiver's services.

ere should be deducted from that total the

The rest of the time was devoted exclusively to the defense of the Receiver. I therefore place figure of 4.7 hours in the margin.

May 12th. My time slip shows 5.2 hours devoted to the following services: Conference with Hubert Laugharn re his testimony as to the reasonable value of services rendered by Receiver's attorney;

I was in court on the hearing on Mr. Richmond's objections to report and petitions of Receiver and his attorneys for fees;

I spent approximately one hour with Mr. Laugharn that morning before I came to court. I therefore deducting that hour from the total 5.2 hours and have placed the figure of 4.2 hours in the margin as allocable to the defense of the Receiver.

My time slip for May 13, 1954, shows 3.1 hours devoted to the following services: In court re hearing on defendants' objections to report and petitions of Receiver and his [637] attorneys for fees

Telephone call to Mann and thanking him for appearance as an expert witness; 3.1 hours.

The Court: You think your expression of that is something for which you should be paid?

Mr. Whyte: I think my expression of that took about .1 of an hour to telephone, your Honor. If you would like to deduct .1 of an hour from the total, I will be pleased to do so.

courtesy in them, even though courtesy is not
ded, or at least you are not charging for cour-
as such except in this one instance, so far as
have gone with this document. I haven't read
yond where you have now come to.

e. Whyte: My time slip for May 14th shows a
of 5.8 hours devoted to the following services:
s in court on the hearing on defendants' objec-
to report and petitions of Receiver and his
neys for fees;

conferred with Mr. and Mrs. Hallberg during
ecesses in the hearing; I prepared and dictated
pothetical question to Laugharn as an expert
ess regarding the value of the attorneys' serv-

pproximately one hour of my time on that day
devoted [638] to preparing the hypothetical
tion to Mr. Laugharn, so that I have deducted
from the total of 5.8 hours and placed a total
8 hours in the margin.

y May 17th time slip shows 3.5 hours devoted
he following services: Conference with Mrs.
berg re matters to be offered in evidence on
s examination of Mrs. Kennedy.

ne court will recall that she was one of the
tment house managers who testified for Mr.
man.

ing as an expert witness, as to reasonable value of my services.

Since that item is not compensable I have placed it in the right-hand margin.

On June 7th my time slip shows 4.3 hours devoted to the following services: In court re Receiver's report and petition for fees as well as attorneys' petition for fees;

Approximately one hour of this total allocated to defense of Receiver and 3.3 hours allocable to defense of Receiver's attorneys.

The court will recall about 11:00 o'clock in the morning I stood up and announced I was ready to present the case for the attorneys for the Receiver. I took the stand and was [639] cross examined after lunch by Mr. Enright.

Mr. Laugharn, my expert witness, took the stand late in the afternoon and was cross examined by Mr. Enright.

May 13, 1954. My time slip shows 3.1 hours devoted to the following services: —I beg your pardon. I haven't turned the page.

June 8, 1954. My time slip shows 3.1 hours devoted to the following services: In court re hearing on Receiver's report and petition for fees as well as petition for fees to attorneys for Receiver. Approximately one hour allocable to defense of attorneys' fees.

In that connection, the court will recall Mr. J.

time than was allotted to Mr. Fussell's testi-

any event, I have placed the total of 2.1 hours in the margin, which is allotted to the defense of Receiver's fees.

On 9, 1954, my time slip shows .1 of an hour devoted to the following services: Consideration of letter from Camusi enclosing Department of Eminent domain form of notice of delinquent return with request that Receiver prepare same; letter to Hallberg enclosing notice of return.

On 14th, my time slip shows .3 of an hour devoted to [640] the following services: Telephone call from Mrs. Hallberg re notice of delinquent reform from the California Department of Eminent domain;

Telephone call to Laurence Martin re preparation of this return; dictated note to Camusi to be delivered to him along with the return.

On 17th my time slip shows .8 hours devoted to the following services: Study of file in preparation for final argument re objections to Receiver's report and petition for fees.

Approximately .3 of that time is probably allotted to my preparation of an argument on behalf of my own fees, so I have inserted the figure of .5 in the margin.

On 18, 1954. My time slip shows 1.4 hours de-

Perhaps of that time I spent .5 of an hour defending my motion as to being entitled to fee

I have, therefore, totaled the hours devoted to the administration of the affairs of the receiver during the three-month period on those matters which came up regarding the receivership after termination, together with the time spent defending the attack made on Mr. Hallberg's petition in his report. It comes to a total of 130.6 hours. [If that total is divided into the fee of \$1,000 which the court has awarded to me, it is approximately \$7.70 per hour.

I say in all sincerity if Mr. Hallberg, in my opinion, is entitled to counsel whose competence and ability are worth more than \$7.70 an hour, then in a case in which he should be well represented, if the court feels that my time is worth only that sum, then perhaps I should be removed as counsel.

Now, I think studies of time devoted by attorneys to their practice show that compensable work per month for attorneys who work, work hard is approximately 125 hours a month.

All of us, the court, Mr. Enright, Mr. Richmond, Mr. Camusi, have been practicing attorneys. We know that if we can perform six hours of compensable work a day, with the demand on a lawyer for a certain amount of charitable work, office administration, work for which he is not paid,

ence, I have devoted approximately one month's out of a year to the work performed in connection with this receivership.

The overhead in our office is approximately \$50.00 a month, and lest there be any charge that is too high, [642] in our office it runs about 33 per cent of our gross. In most offices the overhead is between 25 per cent and 33⅓ per cent.

My half of the overhead, since I have one partner—there are only two of us in the office—would be \$25.00. On the basis of the fee awarded me by the court of \$1,000.00, I would have made a net profit for a month's time of \$350.00. That is salary which is paid to a lawyer fresh out of law school who begins work at O'Melveny & Myers.

I have been practicing in this city for 13 years, and I have a little more experience than the chap who has had no experience and been employed directly out of law school at a figure of \$350.00.

The court's examine the court's fee from another criterion, namely, the criterion of the testimony presented by the expert witness. It has come to my attention that the court felt that possibly Mr. Laugham, one of the two expert witnesses, was testifying about his work in connection with receiverships in general and not with respect to the particular work performed in this receivership.

Typically, before I brought Mr. Laugham to

with the court in connection with the administration of the affairs of the receivership. [643]

He went over carefully the original petition for fees, supplemental petition for fees. He went over the report that I had prepared for the Receiver.

Naturally, he carefully examined the objections filed by Mr. Enright. And the court will recall that on his direct examination I laid that foundation. He testified that he had examined all of those documents.

My question to him as an expert witness was as follows:

“Mr. Laugharn, please assume the following facts:

“John Whyte, the attorney for the Receiver, has been engaged in the active practice of the law in Los Angeles, California, for a period of from 10 to 13 years;

“For 10 years he was associated with the office of O'Melveny & Myers, one of the leading firm of attorneys in this city;

“On or about December 1, 1953, he was employed as attorney for the Receiver herein and has continued at all times to represent the Receiver;

“The Receiver was removed from his active duties of management of the business and affairs of the former Richman Trust on February 28, 1954.

“After the Receiver's removal on that date, John Whyte prepared the Receiver's Report and Filing 53417 from All

of the business and affairs of the former Richman Trust;

assuming further that Mr. Whyte performed substantially all of the services specified in the Report and Supplemental Petition for Allowance of Fees for Attorney to Receiver, exclusive of services necessarily rendered by him in defending the Receiver and his attorneys against objections filed by defendant Richman to the Report and Supplemental Petition for Fees of the Receiver and his Attorneys, which said services were performed commencing on or about December 1, 1953, to and including May 10, 1954;

the time devoted by Mr. Whyte to the rendering of said services, excluding services rendered in defending the Receiver and his attorneys against objections raised by the defendant Richman to the Report and Supplemental Petition for Fees of the Receiver and his attorneys, has been approximately 1,000 hours;

The assets of the former Richman Trust, which have been administered by the Receiver, have an estimated fair market value of approximately One Hundred and Two Hundred Thousand Dollars;

On the basis of these facts, what is your opinion as to the reasonable value of such services?"

The court will recall that Mr. Laugharn gave his opinion that the services would be valued at a certain amount.

expert testimony adduced by Mr. Richman in position to testimony presented by me.

And I further presented the testimony of Paul Fussell, who is the senior corporate attorney at O'Melveny & Myers, regarding the reasonable value of my services in defending the Receiver against the attack made upon his report and petition for fees.

In that connection the court will recall that we were engaged in hearings on six different occasions. Approximately four of those days consisted of a morning and afternoon session, and on two of them there was either a morning or afternoon session.

I have already recited the hours spent in preparing for that hearing. There was a day and half of depositions. Mr. Enright took the deposition of Mr. Hallberg and myself in advance of hearing.

Mr. Fussell testified, on the basis of those facts and some others which were put to him, that a reasonable value would be between \$1,000.00 and \$1,200.00.

Again, speaking to the court and to those of you who are [645] present and members of the Bar, I think any of us, particularly these gentlemen here who are trial lawyers, appreciate the fact if they are called upon to try a case in court lasting a week, depositions in advance, preparation for trial

the court and I had the pleasure of working on the Inglewood Federal case which involved the appointment of a conservator for a savings and loan association in Inglewood. I was one of the counsel, of the interested parties to the lawsuit.

The court appointed a conservator for the Association on a Friday. The conservator arrived at the association between 7:00 and 8:00 o'clock in the evening.

He was relieved from his office at about 11:00 p.m. the following Monday morning. And during that period of time he was almost constantly at the association, and I know that his attorneys performed valuable services on his behalf during that five-day period.

There was one court appearance necessitated on behalf of the attorneys during that period, which was in connection with the order that came from the Washington appointing the conservator from the Federal Loan Bank Board to surplant the conservator appointed by this court.

Hereafter the attorneys for the conservator filed a report covering his services and a petition for payment to him [646] and to themselves. In their petition they stated that they had devoted 40 hours of time to their work on behalf of the conservator.

A hearing was held in this court which took approximately one hour. The only attack made upon

place, and therefore any award of fees to him and his attorneys would be highly improper.

The hearing, as I say, took approximately one hour. No other attack was made upon the report or petition for fees.

Thereafter, the court granted to the conservator a fee of \$2,000.00 and a fee to his attorneys of \$1,000.00.

If I may briefly compare the two cases, in the one case, the conservator case, which I freely admit was an important case, there was a run on the association at the time, and an excellent attorney was appointed for the conservator, and the conservator was an excellent man. As I say, the period of conservatorship was about three days. The attorney filed one petition with the court during that period.

Thereafter, they filed a petition for fees alleging 40 hours of services. And one hour devoted to the hearing on that petition in the court.

The fee awarded to the attorneys was \$1,000.00 and to the [647] conservator was \$2,000.00.

In this case the period of receivership was three months. I made approximately four court appearances during that period in the presentation of petitions on behalf of the Receiver, such as a petition for permission to renovate the apartment building, pay bonuses, petition in chambers to have me appointed as the Receiver's attorney.

After the close of the three-month period of

attacks made upon his report and petition for and a day and a half in depositions, preparaworking with the Receiver as to the evidence would be adduced at those hearings.

In this case the fee awarded to the attorneys for Receiver was \$1,000.00 on the basis of 130 , and the fee awarded to the Receiver himself \$6,000.00.

It concludes my remarks with reference to the except that I might make this statement:

My lawyer is embarrassed to come before a court state in his opinion the fees fixed by the court too low. No lawyer likes to be placed in the shameful position of arguing about his fees with court or with counsel.

I am distressed that it should have been necessary for me to ask the court for this opportunity. Thank the court [648] for having granted me the opportunity to present my petition.

I am open to any questions concerning my petition or any other facts which took place during the receivership.

The Court: Having met you outside the court hall as in, and having a personal liking for you, embarrassing to the court to have the matter brought up.

I will recall at the very outset the court had Hallberg here. I had asked him to come in. He

desired a receiver to serve. I said to Mr. Hall and I think I said to you at the very outset, one of the reasons why Mr. Richman has been moved is that he went out and got a life contract for work at an excessive fee.

And there was ample evidence here in court that the fee he was charging was excessive. This was primarily a property management affair. For a Receiver it was to be less demanding in one sense if it had run its normal course, than if he were a trustee under the Richman Trust, for the trustee under the Richman Trust had broader powers and duties than simply those of property management.

The Court was interested, however, that the expense of a brief court supervision of these properties, pending what was then determination of appeal, or it was a promised [649] appeal then the possibility of settlement, the court was interested that the court's administration of the property should not be as costly as that which the court had found was excessive. I expressed that to everyone in the case.

Now, Mr. Hallberg asked for less than he asked out of the court. I increased, not the prayer of the petition, but the tenor of his testimony, because I felt that he had not given any account to the court of having to account so fully in court, as he had by the accounting which he had prepared and filed.

to the suit and one of the attorneys to the man with less respect than I have seen embezzlers treated when I was handling the criminal calendar in the court.

As far as the court's desire to hold down the expense is concerned, that is always a desire of the court and should always be a desire of the court.

I remember Judge James—I am always remembering what other judges have said, which is perhaps what lawyers are supposed to do, because it is what other judges have said, which establishes a basis of precedents by which we proceed.

I had occasion to resist a fee before Judge James in a [650] matter where an involuntary petition in bankruptcy had been filed. The creditors had been personally dissatisfied before the day of the hearing on whether the man should be adjudicated bankrupt.

The only thing that remained was the fee. The attorneys said, "Well, this was a large estate of a bankrupt. The creditors' claims were large. The fact that relatives had come forward and paid off doesn't relieve us of the fact or the history. I, as an attorney, have rendered services concerning a large sum of money, even though the service didn't take a lot." A thousand dollars, I thought, was too much.

Judge James then said, "Lawyers should always remember that the lawyer exists for the litigation

He went on to point out some of the more idiosyncratic statements which have been given by writers on ethics, and the professional as distinguished from the business characteristics of the legal profession.

So I thought you were going to have an economic administration. When the petition came before the accounting, the court was impressed that the attorney for the Receiver rendered every possible service. I could see no purpose, for instance, in going to the bank with a client to open a bank [?] account, particularly where the client had accounting experience, was an established businessman, had been a controller of corporations, and perfectly capable of opening a bank account without the presence of an attorney, or more than the mere casual legal advice on it.

It seemed to me that the legal services had been rendered, no doubt, to the number of hours claimed, but to a greater excess than the requirements of the case were.

I at one time acted as attorney in Los Angeles for a corporation which had many properties in this locality, which it had foreclosed upon during the depression days. And I recall, although the business was property management—they had many apartment house managers around Los Angeles—that the requirements of their resident attorneys under corporate management, were such as to

call, I think, from Mr. Enright—someone in his office—after we had had our conversation on, I think it was, November 30th, in which the court had indicated that an order should be made for the appointment of Mr. Hallberg as receiver, and Mr. Hallberg should then qualify, and we fixed the bond.

Then I had a call from Mr. Enright or someone in his [652] office to the effect that Mr. Hallberg was about collecting rents and demanding things of tenant house managers, exercising the active powers of a Receiver, and had a lawyer with him, which it turned out was Mr. Whyte.

The court had not signed any order. The proceedings started as a *de facto* receivership, without the *de jure* qualifications.

The Receiver had not taken the oath required of receivers, had not posted the bond required of receivers, had not been appointed by a formal order directed to appoint a receiver.

The quality of the legal advice to a man to go on and embark upon the actual administration when he was qualified legally to do so was not a subject of advice that I am sure you generally hand to Mr. Whyte, because you are known for being associated with cases of considerable magnitude in the courts.

I had some qualms when Mr. Hallberg told me

standard of compensation. And I had in mind that you would get something more nearly like I got when I worked for a corporation, where my fees were fixed by a hard-headed board of directors, rather, my bills were approved by them, and so sometimes the bills were reduced simply because [6] they weren't willing to pay the amount asked for the services which had been rendered.

Then we proceeded in a rather relaxed, it seemed to me, course here, in which the time was spent without all of it being required. You came in and fought for the justification of the Receiver's administration, when the administration was under fire.

The court found it had been a good administration. Perhaps I was not as liberal as I should have been in awarding you fees for representing Hallberg during those rather trying days in court where his every act, from the time that he did similar work, although upon a different legal basis in Chicago some twenty years ago, down to the very moment he was on the witness stand, that I thought perhaps I was a little too conservative in the fees.

We have out in this courtroom a little placard on each of the tables which I modeled after the one in Judge Mathes' courtroom, which he in turn modeled after the one in Judge Jenney's courtroom. I don't know where Judge Jenney bought it. Various judges around here use it. It requires counsel to perform their duties in the courtroom in certain

For instance, you are supposed to stand at the bar when you ask questions. I don't think you did there once, [654] except when you made argument. You lolled around the courtroom in your slippers; without any disrespect to the justice courts, as if this were a justice court. The justice courts proceed in a relaxed sort of in-chambers fashion; federal courts do not.

But we began with an unlawful, improper administration, which the appointment of an attorney for Receiver is the very thing the attorney is supposed to see doesn't happen, because these receivers are busy men and they are not acquainted, unless they are often receivers, and Mr. Hallberg has not been often a receiver, or if ever an actual receiver was there, and I understand from him that if his experience in this case is an example of it that he wouldn't want to be one again, because of the criticism and acrimony which attends being a receiver in such situations which grow out of family unpleasantness, such as we had here, where litigants have a bad temperament that was expressed in some places.

But if you had administered an estate in probate in California and the corpus of the estate were a large amount of money which was handled by Mr. Hallman,—I don't mean the value of the fee of the attorney, but the property, because Mr. Hallberg was essentially

Of course, you probably think that doesn't a because [655] the total value of fee of the various properties involved was over a million dollars.

Now, since all of these things have been considered and with the time the court has now had to rely upon it, I think I was a little low so far as fees are concerned. I think I was, to put it colloquially, right on the button so far as Hallberg was concerned.

I will reconsider the fees for the attorney formally, without the necessity of further petition. We don't want to run the fees up any more than they are now. But now, let's start out.

Mr. Richman, if you want to get in this—you are a lawyer and you have had a lot of experience—you don't have to answer me if you don't want to—but my idea is to start with you, just because you are at the right of the room, and proceed across to Mr. Whyte, who is most perhaps directly interested, except you, and find out what you think these fees ought to be.

Do you want to express yourself, Mr. Richman? I don't mean in great detail as to why, but give me a figure of what you would consider a reasonable fee for the attorney, and then Mr. Enright, then Mr. Camusi and finally Mr. Whyte.

Mr. Richman: Any statement I would make would be biased by the evidence and my knowledge of the situation. This is a very complicated

ther on it. I refer primarily to the smog mat-
he mess——

e Court: I took that into consideration. Hall-
was delinquent in that; so were you.

Hallberg had been fully advised legally, I
think he would have been delinquent.

. Richman: I think that an attorney should
sponsible for his misdeeds as well as his deeds.
made himself a lot of work there and created
eat deal of embarrassment to me in being
ed criminally with violation. There was no
n for it.

der the circumstances, I feel that what he did
't done properly and caused himself a lot more
and also brought on a lot of discredit to other
iduals on that.

hink he has been paid amply for the services
ndered, the type of services he rendered.

e Court: What do you think of it, Mr. En-
? [657] * * * * *

. Whyte: May I say one word today, so I
t forget it tomorrow. I felt rather badly when
court made the observation a moment ago I
d about the courtroom and until the final ar-
ent I never stood at the appropriate place in
essing the witness.

vant the record to show that the court's bailiff

judge has a question which he says is some urgent. I will call him.

I don't mean what you are saying isn't important, but when a judge says it is urgent, I will respect him. (Short recess taken.)

The Court: The last comment I had was that was too easy on them.

Mr. Whyte: The first day of the hearing call I did overlook the instructions on the courtroom table with reference to standing at a particular place when addressing the witness. [659]

The second day of the hearing the court's bench came to me and called my attention to the bench whereupon for the rest of the hearing I remained distinctly I stood at the end of the jury box, which was one of the few places he pointed out to me as being a proper place to stand.

The Court: Well, I am sorry then, Mr. Whyte. I remembered your misfeasance and forgot your compliance. I simply mentioned it to indicate that at the very beginning, when the man should have taken his oath and been bonded, after having been appointed upon a written order, he went forth and acted lawfully and at the very conclusion the attorney was not standing by the courtroom rules, both of which acts I attributed to a lack of your usual vigilance. I know you are generally pretty sharp about these things.

. Whyte: One other comment I should like make——

. Enright: I would like to make a comment.

e Court: You can make all the comments you to.

. Enright: I prefer to proceed then.

e Court: Let me go in the courtroom for a few tes and I will excuse the people until 11:00, hen we will proceed. (Short recess taken.)

e Court: You take as much time as is reason- necessary [660] to present your position.

. Whyte: Could I correct one statement on record before Mr. Enright begins, if I may?

e Court: Surely.

. Whyte: This is the first time that I have ved the intimation that I am to blame for llegal dereliction of duty of Receiver in con- on with the Smog Control citation.

e court will recollect the testimony that Mr. berg submitted the contracts made by Mr. man with the smog installation people to me e day before Christmas.

took them home with me and advised him ly after Christmas that he was bound by the acts and to go ahead and perform them.

. Hallberg testified that on or about the 2nd nuary he instructed his bookkeeper to mail the s and specifications to Oxyaire, which was I e the name of the installation corporation.

tice was never called to my attention, as Mr. Hallberg himself testified in court.

I knew nothing whatever about the impending danger of the County Smog Control authority cracking down until the 29th or 30th of January when the formal citation was received. [661] This was the first information related to me by Mr. Hallberg that he was in danger of being cited by the county or city authorities. The warning notice was never referred to me, and I had advised the Receiver in December that he was bound by his contracts and to go ahead and perform. That is all I had to say, your Honor. [662] * * * * *

The Court: The court told him—that is on the conferences I think specified in the petition—that it felt it would be better to make quarterly reports.

At that time I was in full expectation of an appeal from the principal judgment, and in the interest of economy and considering the simplicity of the administration of those apartment houses, I thought that quarterly report would be adequate. The Rules contemplate there may be exceptions; at least, the court thought they did. Some of the other judges, who had experience in these matters far beyond mine, think they do. [663]

So if there is fault there it is the fault of the court. It is not the fault of either Mr. Hallberg or Mr. Whyte, that there wasn't an accounting at

[665] * * * * *

g a bill, due on the 1st, do you? Don't you
times pay your bills a day or two ahead of
?

r. Enright: Ordinarily sometimes, yes; noth-
unusual about that. This was different, your
or. Here an order was made on the 26th.

e Court: What was the order on the 26th?

r. Enright: That the Receiver discontinue his
e management and only collect the moneys up
e 28th and retain the money in the bank and
cash under his control.

e Court: Of course, there might be many
derations there. A receiver administering a
erty on which there is a deed of trust, which
amortized over a period of time, about to sur-
er it to a new owner, not a person who didn't
any prior interest, but a person who is assum-
the [669] duty of management, control of it
he first time, might feel that it would be an
f prudence to put it in condition so that the
on could have a little time to orient themselves
e ownership and its obligations before the pay-
commenced to fall due. He was only giving
33 days. It was a type of thing the court could,
s I committed error in the memorandum,
h also contains this attorney's fee fixing, that
court could adjust that by requiring that the
on for whose benefit it was paid bear the bur-

pediency of the legalities and equities which were susceptible of adjustment and were adjusted by the court in very little time. I could conceive of some one in almost every one of the big law firms in Los Angeles advising a receiver, under those circumstances, to pay that money. [670] * * * * *

The Court: You think it is a little low?

Mr. Camusi: I would say this: If he has put in this number of hours and if it all was devoted to matters that are clearly within the scope of his duties as attorney for the Receiver, I would have said it was low or I would be dishonest about it. * * * * * [680]

Mr. Camusi: I would like to make one more comment for the record. It always seems that when time anything comes up, why, the plaintiff and defendant attorneys are not in agreement, although it involves a third party.

I don't know Mr. Whyte personally and I am not making statements which are obviously contrary to Mr. Enright's ideas because I want to be contrary to Mr. Enright, because I don't. I wish I could be more in agreement with them at this time but I just feel that we came into court and asked for a receiver. It was very important to our position.

We asked for a receiver. He has to have an attorney, and if we are going to not be fair at this stage of the game, when it comes to fixing a fee

think we are very satisfied with the final result
our case and now we have gotten what we want
figured what we got we were entitled to—I
k we would be less than fair if I came in here
his stage of the game and said I thought the
were reasonable, when I thought they were not.

Endorsed]: Filed March 1, 1955.

le of District Court and Cause.]

DEPOSITION OF ROY E. HALLBERG

en at Los Angeles, California, April 22, 1954,
re Kathryn A. Kirby, Notary Public.

* * *

ROY E. HALLBERG

ng been first duly sworn, deposed and testified
ollows:

Direct Examination

Mr. Enright:

. Mr. Hallberg, you have not designated in the
tion filed in your behalf the amount of fees
seek for your services as receiver?

. That is correct.

. Have you determined in your own mind what
pensation, that is, the amount of dollars, you
ld desire to receive?

. No. I have left that up to the court.

(Deposition of Roy E. Hallberg.)

Q. What is your business address?

A. The same address.

Q. Do you use any other address for business purposes or——

A. Not now.

Q. ——otherwise?

Mr. Enright: What answer do you have, Mr. Reporter? [3*]

(The answer was read by the reporter.)

Mr. Enright: Q. Have you had a business address at some time in the past? A. Oh, yes.

Q. Would you state what the business address was?

A. Well, I had—do you remember the one on Foothill Boulevard?

Mrs. Hallberg: I think it's 18 something.

The Witness: I think it was 1835 Foothill Boulevard. I think that's what it was.

Mr. Whyte: Speak up just a little bit, please, Roy.

The Witness: Yes.

Mr. Enright: Q. When did you have that address at 1835, or approximately 1835 Colorado Pasadena?

A. Oh, about two years ago. I have most of my business correspondence directed to my home, wherever I have lived.

Q. What was the nature of the business conducted at this address on Colorado?

osition of Roy E. Hallberg.)

That was Morgan Construction Tooth Com-

Morgan Construction Tooth Company?

Yes.

How long did you engage yourself at that
ess for the Morgan Construction Tooth Com-

? A. Oh, about six months. * * * * * [4]

. Enright: Q. What was the nature of that
ess?

Construction equipment. That was a manu-
ring company.

What did the company manufacture?

Replacement parts for construction equip-

What parts?

It was the tooth, if you are familiar with
y earth moving equipment.

I am quite familiar with it. A. Yes.

Will you explain in what respect did this
any manufacture parts for heavy earth mov-
equipment?

Well, they manufactured replaceable teeth.

To be replaced on boom shovels, for example?

On power shovels, rippers, things like that.

What was your association or status with
company? A. I was vice-president.

(Deposition of Roy E. Hallberg.)

Q. What was the year? You have stated approximately two years ago.

A. Do you happen to know? [5]

Mrs. Hallberg: Maybe Mr. Whyte could you with that.

Mr. Whyte: Can you tell us approximately Hallberg?

The Witness: Well, I am trying to think. It in 1951.

The Witness: '51. Are you looking for a chronological employment record, or something like that?

Mr. Enright: Q. Yes, that would be appreciated. If you want to state that, I'd appreciate it.
* * * * * [6]

Mr. Enright: Q. Would you state your employment record during the past 10 years, Mr. Hallberg.
A. The past 10 years?

Q. Yes, approximately.

A. All right. The Garrett Company, Brooklyn, New York.

Q. From——

A. Well, I was with them for 13 years, I believe.

Q. When did you leave them?

A. Left them as of January 1, 1947.

Mr. Enright: Q. Yes, sir.

A. And came out here.

Mrs. Hallberg: He would like to know average earnings there.

position of Roy E. Hallberg.)

About \$40,000 a year.

\$40,000 a year?

That's what I was earning when I left. [8]

Well, now, you have stated that you were
Garrett Company 13 years—— A. Yes.

——and you left Garrett Company in 1948?

Yes, I came out here for Refrigeration Cor-
poration of America.

Yes.

As Western Regional Sales Manager at \$10,-
a year, plus an override, which was based on
me. And shortly after, think I had been with
a year——

Q. Hallberg: About a year and a half or two
years.

A. Witness: That's closer to it, about two years.

Q. Enright: Q. Did you——

They ran into—they got into financial trouble
east, and they wanted——

A. Hallberg: Company dissolved.

A. Witness: Yes, that was part of the parent
company. The parent company was Noma Electric.

Q. Enright: Q. How would you spell that?

N-o-m-a. They dissolved the company, and
assets were sold about a year later.

They dissolved which company, Refrigeration
Corporation of America?

(Deposition of Roy E. Hallberg.)

go to the hospital and I was out of circulation for a bit of the time.

Q. Yes. Well, now, just to space it here a little bit, the year and a half to two years with Refrigeration Corporation of America, that would commence early in 1948, is that right?

A. It commenced in January, 1947.

Q. And terminated—— A. In October, 1948.

Q. ——in what year? A. October, 1948.

Q. About 1950? Then you had difficulty on your back? A. That's right.

Mrs. Hallberg: You were still tied up, weren't you?

The Witness: Well, yes, I have still got a tie-up there with the company that I have an interest in Warrenton, Missouri. I was doing some special work for them?

Mr. Enright: Q. When was it? What's the name?

A. That was right immediately following the war.

Q. Following what, Mr. Hallberg?

Mrs. Hallberg: October, 1948.

The Witness: October, 1948. [10]

Mr. Enright: Q. Miss Cosgrove or Mrs. Hallberg stated November, 1950. Is that right?

Mrs. Hallberg: No, October, 1948.

Mr. Enright: Q. What is the name?

A. Binkley Manufacturing Company, Warrenton,

Missouri.

position of Roy E. Hallberg.)

Oh, yes. Yes. Let's put it this way: I have interest in the company.

That is a corporation, I take it?

It's a corporation.

In what state? A. Missouri.

Missouri corporation? A. Yes.

I assume that that's part time?

I have done special work for Binkley from to time, yes.

Then after the Binkley Manufacturing Company, next is the Morgan Construction Tooth?

That's right.

You previously stated, I believe, it was about months with Morgan Construction Tooth?

Yes.

That is what year? [11]

In 1951, last half.

rs. Hallberg: '1, I think, isn't it?

ne Witness: 1951, I am quite sure.

r. Enright: Q. 1952? A. No.

And Mrs. Hallberg thought possibly 1951?

What employment have you had since Morgan Construction Tooth in 1951 and 1952?

Oh, I did some special work for Narmco.

How do you spell that? A. N-a-r-m-c-o.

N-a-r-m-c-o, yes.

(Deposition of Roy E. Hallberg.)

A. No, just special assignments I was doing them.

Q. For whom?

A. I said these companies, like Narmco.

Q. How long were you employed by Narmco?

A. About a year, I think.

Q. What year would that be?

Mrs. Hallberg: September of '52 to October

The Witness: September—thank you. [12]

Mr. Enright: Q. September '52 to October

A. '53, yes. * * * * * [13]

Mr. Enright: Q. But you are one-fourth owner of the Morgan Construction? [18]

A. That's right.

Q. Now, you stated you were general manager, is that correct, of Morgan Construction?

A. That is right.

Q. What did your duties consist of, as general manager?

A. Oh, all the office procedure, running salesmen, doing some sales work, and lining up production.

Q. Now, under office procedure, would that include keeping the books?

A. I helped on that, yes.

Q. Will you explain what you mean by "I helped on it"?

position of Roy E. Hallberg.)

That would be making the entries of expenditures of money and—— A. Oh, yes.

How about receipts of money, would you enter them? A. That's right. * * * * * [19]

r. Enright: Q. What has been your connection with the Binkley Manufacturing Company?

I am a stockholder in it.

Over what period of time?

Oh, since 1936, I believe.

Other than being a stockholder, have you been an employee on a full time basis at any time?

Since October, 1948, and after August, 1949 as president of the subsidiary known as Hall Industries.

That is a corporation?

It is a corporation, yes.

In what state is it a corporation?

Missouri.

Well now, I assume from what you said that you were an employee of the Hall Industries but not an employee of Binkley Manufacturing Company; you are only a stockholder?

That is correct, after the subsidiary was formed.

Yes.

Hall Industries was a sales organization for

(Deposition of Roy E. Hallberg.)

Q. Now, which products did Hall Industries for Binkley Manufacturing Company?

A. Traverse track and other products.

Q. Traverse track curtain rods. Any other that they made?

A. Well, that was the main product at that

Q. I am not informed at all on curtain Would you mind telling me, are they for residence or for income property——

A. Residential—— [23]

Q. ——Or what?

A. Residential, income property, apartm homes, everything, every place where they wa decorate and to curtain a window so that the tains can be drawn away from the windows.

Q. Now, such rods are not sold direct to residents, are they? How are they marketed, or did Hall Industries market these rods?

A. They were marketed through distributor up in various parts of the country from coa coast.

Q. Oh, and Hall Industries has set up these tributors, is that it? A. That is correct.

Q. Now, where is the place of business of Hall Industries?

A. Warrenton, Missouri.

Q. That's a corporation?

A. That's right.

position of Roy E. Hallberg.)

Very, very small. Binkley is the major inquiry.

What was your rate of compensation as an employee of Hall Industries?

I think I was working there at the rate of \$100 per month—

Q. Hallberg: Before income tax, about \$20,000 a year [24] on that.

A. The Witness: Yes, that's what I was going to say, about \$20,000 a year.

Q. Enright: Q. Over, or during what years?

October, 1948 to April, 1951.

* * * [25]

Now, do you have any particular office hours during the week as an employee of the County of Orange? A. No.

Are you required to report at any time on any day of any week? A. No.

Will you state how many days during the month of December you worked for the County of Orange; that is, December 1953?

A. Whyte: Objected to as having already been asked and answered. The witness testified very few.

Q. Enright: Q. Do you have a desk as an employee of the County of Orange? A. No.

Do you have a telephone extension number?

* * * * * [26]

(Deposition of Roy E. Hallberg.)
in Southern California during the last two or three
years?

A. A 16-unit furnished apartment building
South Pasadena.

Q. Would you give us the address?

A. It's 1509 South Fair Oaks.

Mrs. Hallberg: That's South Pasadena. [38]

The Witness: And that's South Pasadena.

Mr. Enright: Q. Any other apartment building
or——

A. Yes, I have one at 507 South El Molino.

Mr. Whyte: Is that Pasadena, Mr. Hallberg?

The Witness: That is Pasadena.

Mr. Enright: Q. Any others?

A. Only our own buildings up there.

Q. Where are they?

A. Well, those are homes.

Q. What addresses?

A. 85 Glen Summer, 90 Glen Summer; and
both of them ourselves.

Q. You mean those are new residences that
you built? A. Yes, that's right.

Q. Any other real property that you have
experience with or managed or were in any way
connected with in Southern California?

Mrs. Hallberg: 1202; 218 Fernleaf; 218 Fern-
leaf, and 1202 Seaview.

The Witness: Well, 1202 Seaview was the——

osition of Roy E. Hallberg.)

ifferent parcels of real property. Any others?

Yes. In California, no. Oh, there is 218 Fern-
That's a house I built and sold. [39]

. Whyte: In what city, Mr. Hallberg?

e Witness: Corona Del Mar.

. Enright: Q. Now, have you participated
y manner in the management or operation of
real properties or improvements upon real
erties other than these six that you enumerated

? A. In California?

Yes. A. No.

Had you had any experience with any other
properties other than these six that you have
erated here in California?

No, not in California.

Have you had experience with real property
y other State? A. Yes.

What real property?

In New York.

What addresses?

e Witness: 10 Rock Ridge Road, that's what

. Enright: Q. Spell that, please.

R-o-c-k R-i-d-g-e R-o-a-d. [40]

What city?

Larchmont, New York.

Any others?

(Deposition of Roy E. Hallberg.)

Mr. Enright: Q. Any others?

A. Yes. There are quite a few others that were managed during a period of receiverships coming out of the insolvency of the Citizen's State Bank in Chicago—yes, in Chicago—which was located on Lincoln Avenue near Belmont.

Q. That is the bank was located that way?

A. Yes.

Q. When was it this receivership occurred?

A. That went into receivership, oh, during 1931, I believe, or '31 to '32. You are asking me to go back a long way now.

Q. For what duration of time were you connected with that receivership?

A. About a year, or more.

Q. In what capacity?

A. I was managing the buildings there.

Q. How many buildings?

A. Oh, some 40 or 50. [41]

Q. Were they different types of buildings?

A. All different types, from residences up to large apartment buildings.

Q. What would you define as a large apartment building?

A. Well, there's one hotel apartment there had about 60 apartments in it.

Q. What is the name of the hotel?

A. Oh,

position of Roy E. Hallberg.)

buildings, depending upon the nature of the build-

Well, I will hold my question to unit-wise.
Is it the largest?

In units, yes, I think.

Was this 60 unit hotel?

Yes. That was apartment hotel.

Apartment hotel? A. Yes.

What is the name of that?

I can't give you the name of it.

The location?

Location is on North Oakley right near Logan
are.

Were you the receiver for this Citizen's State
Bank? [42] A. No.

Were you an employee of the receiver?

No, not of that.

Well, who employed you to——

It was a trust that was set up by the sale of
Murray, the Eich Dairy, and Mr. Gus Eich had his
money from that trust invested in these real estate
properties, and upon default we took over the manage-
ment of these various properties.

Who is "we"?

I was working with Mr. Eich.

I see. Well, then, who was the receiver?

(Deposition of Roy E. Hallberg.)

Q. Will you explain further what you mean the word "we"?

A. Well, Mr. Eich, who was still in the da business, was made receiver on several of th buildings. Now, I at the time had been work for Walter Larsen, a real estate operator, and acquainted with Mr. Eich through one of his bu ings, which we took over to manage; that is, Wa Larsen did, and I was running the building him, and I got acquainted with Mr. Eich that v and when these buildings came in, we set up own operation of these various buildings. I was rectly in charge of all of them. [43]

Q. How many in number now that Eich had

A. It was about 40 or 50 buildings. I can't g the exact number.

Q. And the largest was this 60 unit apartm so far as——

A. That's right. It may have been larger, I d recall.

Q. ——units are concerned? A. Yes.

Q. The other were industrial to residential all various different types?

A. There weren't any industrial. It was all n dential, either in apartments or apartment hotel individual residences.

Q. You were employed there a period of year? A. Approximately, yes.

position of Roy E. Hallberg.)

Did you receive a degree?

Yes, Bachelor of Science in Commerce.

Bachelor of Science in Commerce. What
? A. 1927. * * * * * [45]

r. Enright: Q. Oh, you moved from New York
etly to this 90 Glen Summer? [48]

Pretty close, yes. That covers it pretty well,
the intervening period there of a couple months
re we decided to move in there. We had—it
s time to build a house. That was a brand new
e we built.

That's 90 Glen Summer Road?

90 Glen Summer Road.

Now, you gave me an address of eighty—
85 Glen Summer Road.

Was that another—

. That is another house we built. Actually, the
Glen Summer Road is where we moved first. We
ed—built the house across the street then, and
ed across the street.

. What do you mean by "across the street"?
was across the street from 85? A. Yes.

. So you built a house at 85 Glen Summer
d when coming from New York—

. That is correct.

. —and then having completed building it,
a you started building another house across the

(Deposition of Roy E. Hallberg.)

Q. Both were residences? [49]

A. Correct.

Q. Then where did you move to?

A. Moved to 1202 Seaview, Corona Del Mar.

Q. That is a residence?

A. No, that's three apartments there.

Q. Three apartments? A. Yes.

Q. Did you build that new? A. Yes.

Q. Now, when did you move there?

A. About a year and a half ago.

Q. Two apartments, I take it, are rented?

A. Yes.

Q. So you are engaging in the rental of the properties—— A. That's right.

Q. ——at Seaview, two additional apartments.

A. (The witness nods his head up and down.)

Q. Now, what's this 218 Fernleaf? Is that a new property, or—— A. That is.

Q. ——property you built?

A. I built it.

Q. When did you build that?

A. Oh, during the last summer.

Q. Can you state approximately when it was completed [50] with reference to your taking on your duties as receiver?

A. That was completed before.

Q. How long before?

Mrs. Hallberg: It was finished in September.

osition of Roy E. Hallberg.)

The first property you referred to was Pasa-
apartment building at 1509 South Fair Oaks?

Yes, South Pasadena.

First, what is the name of the apartment
e?

I don't know what it is now. They have
ged it.

s. Hallberg: I think it's still the Mira Monte.

e Witness: Mira Monte.

s. Hallberg: That's what it was then.

r. Enright: Q. When did you acquire that?

I will put it this way: How long did you
ate that apartment property?

About a year.

s. Hallberg: Oh, a year and a quarter, about.

e Witness: About a year and a quarter.

r. Enright: Q. Did you personally operate it?

Definitely.

How many apartments were there in it?

s. Hallberg: 16. [51]

e Witness: 16 on that one.

r. Enright: Q. How many were——

s. Hallberg: Furnished.

e Witness: All furnished.

r. Enright: Q. What year was it that you
ated, or year and a quarter, that you operated?

s. Hallberg: End of '49.

(Deposition of Roy E. Hallberg.)

Q. Who is included in "we"?

A. Well, when I wasn't there——

Mrs. Hallberg: There was a manager.

The Witness: Well, I was talking about the actual work over there. We had a manager living there who collected the rents and notified us of various things that were necessary which we care of, ourselves.

Mr. Enright: Q. You were then living on Glen Summer Road, yourselves? A. Yes.

Q. What is the name of the manager?

A. Mrs. Cosgrove.

Q. That is your mother-in-law? A. Yes.

(There was a brief interruption.) [52]

Mr. Enright: Q. I have asked you concerning 218 Greenleaf, Corona Del Mar.

A. That's Fernleaf.

Q. Fernleaf, pardon me, 1202 Seaview, 90 Glen Summer, 85 Glen Summer, and this 1509 S Fair Oaks. The only other property, real property that you owned or participated in the management of, or were in any manner connected with, was South El Molino? That is Southern California property?

A. That is Southern California property. Yes.

Q. Am I correct so far, that there is only one remaining property, that is 507 South El Molino?

A. That is the only property here in California.

Q. Is California property? A. Yes.

osition of Roy E. Hallberg.)

Four apartments.

When did you acquire those?

s. Hallberg: I think it was January '51.

e Witness: January, '51.

. Enright: Q. Do you still——

January, '51. Yes, I still own that.

* * [53]

. Enright: Q. Now, as to this salary of \$40,-
from Garrett Company, how many years did
receive that salary?

I didn't say it was salary.

Salary and commissions or income,——

It was income.

——or compensation?

It was compensation. Oh, I guess it extended
period of three or four——about four years.

During what four years? [58]

Well, four years prior to the last, my termi-
n there.

When did you terminate your employment
? A. You got that.

In 1947? A. January 1, 1947.

e Witness: No.

. Enright: Q. Yes, what——

It was January 1, 1947.

e Witness: I am a little vague about the years

(Deposition of Roy E. Hallberg.)

Q. Now, you say you received \$40,000 over a period of three or four years, is that correct?

A. That's correct.

Q. How much of that was retained by you for your services? A. All of it.

Q. Did you pay any portion of it out to any of the salesmen or anyone working under you?

A. Well, I didn't give you the gross income from that. [59]

Q. Well, all I want—

A. I am just giving you the net income from that. I didn't pay anything out of that.

Q. And you received net income for your services in working for Garrett Company in the amount of \$40,000 for a period of three or four years?

A. Correct.

Q. —ending in 1947 or 1948?

A. Let's put it as ending January 1, 1947.
Mrs. Hallberg: End of '47.

The Witness: January 1, 1947. * * * * *

Q. Now, Mr. Hallberg, did you attend to negotiating for the changing of the insurance?

A. I did.

Q. How much time did you expend in negotiating the insurance?

A. Quite a bit of time. I contacted the pre-war broker who handled the insurance. I also contacted the Liberty Mutual.

Q. How many conferences did you have

position of Roy E. Hallberg.)

Two or three, and how many with the former
er, Mr. Dulley?

Two of them, and I think we had several
versations over the telephone.

Did you, yourself, personally, make a survey
67] the rental rates in the vicinity of the West-
Arms Apartments?

Yes. In conjunction with—Miss Cosgrove did
ral—made several investigations there, her—

Now, what did you do?

——to check that. I went in and talked to the
agers to find out what I could rent apartments
and inspected available apartments to deter-
e comparability.

And you, yourself did? A. Yes.

What apartment houses did you go to?

Over around the Oliver Cromwell.

Mrs. Hallberg: No, Western——

The Witness: Well, I was over in the next block,

Mr. Enright: Q. Now you are over at the
er Cromwell. I asked you about the Western
ns.

Well, I mentioned the Oliver Cromwell.

Well, I'd like to confine you, if I may——

(Deposition of Roy E. Hallberg.)

A. Yes. I drove around that entire neighborhood and checked the various buildings there and—

Q. How many apartment houses did you check in that vicinity?

A. There are very few of them right in the vicinity [68] there. The nearest one on Western down the street about three blocks and it's a mixed building.

Q. You checked that one?

A. I checked that one.

Q. Now, what other building did you check?

A. Those are the ones right there.

Q. Those is a poor—

A. I am talking about the smaller buildings. Those are residences in the neighborhood, and I went down the street south about a block and a half and saw that big apartment building on the corner which is a mixed building.

Q. That's a mixed apartment. That's the one apartment house you checked in that vicinity, is it, of the Western Arms?

A. That's right. No. Also the building one block directly West of the Western Arms which is very comparable.

Q. Now, did you personally make a survey of the apartments in the vicinity of the Oliver Cromwell?
A. Yes, I did that.

Q. How many apartments did you personally—

position of Roy E. Hallberg.)

s of rents in the vicinity of the Canterbury, the Loma, or the third apartment house?

r. Whyte: Fountain Manor? [69]

r. Enright: Q. Fountain Manor.

Yes, I did. I checked those—some of those buildings up there and each one of them, just to get a general idea of the rentals that were being charged for apartments there.

You personally did?

I did, definitely. * * * * * [70]

r. Enright: Q. Tell me what other did you check as receiver other than the insurance and surveyor—the rental rates in the vicinity of these five apartment houses?

I worked on the accounting record to change the arrangement so that the individual buildings would show up without too much difficulty. I had the files changed around so that we could find the files whenever we wanted to. I changed the listing of the accounts payable in such a manner that they could be located per company and also when they were paid; the check numbers are right on the bills so they'd have a cross-index by numbers.

Yes.

I checked Harrison several times on his accounting. I had to help him balance the cash on

(Deposition of Roy E. Hallberg.)

carrying his totals across. I assured myself all moneys that came in were duly recorded.

Q. So far I think your enumeration here been accounting records, by listing accounts payable, check Harrison a couple times. Now, that pertains to accounting, doesn't it? [71]

A. Most of that does, yes. I also went into various buildings and looked at the physical plant and checked the basements, type of equipment that had.

Mr. Whyte: I am going to remind the witness that he has a right to refresh his recollection whenever necessary for him to do so.

Mr. Enright: Q. Can you enumerate any other major item of service, such as accounting, insurance, surveying rent conditions and checking buildings that you rendered while receiver?

A. Definitely.

Q. That took time, your time? Could you enumerate what they were?

A. At this point it's a little difficult to enumerate every little item, thing that was done.

Q. No, I just wanted the major items, not every little item yet, Mr. Hallberg.

A. Well, let me see. Up at Fountain Manor had a problem there with a sink in the basement which required the services of a plumber and the hot water heating system was causing leaks.

osition of Roy E. Hallberg.)

Did you talk to any other plumber other than Lilly? [72]

That was the only one I talked to at the

Well, I mean during the whole period of
ember—December? A. Yes.

December through February?

Yes. I talked to a couple other plumbers, but
Lilly seemed to be a very aggressive individual
he completed his work in a workman-like man-
was very clean; he knew what he was doing.
Incidentally, Mr. Richman used him also, and
nk he worked out all right.

Any other services in a general nature that
can describe or identify, rather than describe
tail? We have got plumbing now.

I had the problem on refrigeration.

What apartment house was that?

Western Arms.

Did you go to the Western Arms?

I was over there, yes.

When? I don't mean the exact date, but I
with reference to the problem.

The problem developed, and it was one of
conditions that caused immediate action. The
gers were all notified what refrigeration to

(Deposition of Roy E. Hallberg.)

Q. Were you in Los Angeles on the day the problem arose?

A. On that particular day, I think I wasn't on the job, though. Miss Cosgrove happened to be there at the time, and——

Q. So what you know about it is what Miss Cosgrove told you?

Mr. Whyte: Had you finished your answer, Hallberg?

Would you read back the witness' answer?

(The answer was read by the reporter.)

Mr. Enright: Q. Will you state what you know about what occurred there from your own eyes, from your having seen occurrences there? Did you see anything occur there at that time, yourself?

A. Are you looking at me, or Miss——

Q. You. I am interrogating you.

A. Your eyes—your glasses have a reflection, and I can't tell whether you are looking at me or at Miss Cosgrove here. I did not.

Mrs. Hallberg: You inspected.

The Witness: I did not go over there at that time. I got over there the next day and inspected it, and we called in another heating contractor who viewed the problem there. It was after the California Refrigeration had let all the gas out of the system. [74]

position of Roy E. Hallberg.)

You saw all of the gas out of the system, didn't you?

Mrs. Hallberg: I was there, but they didn't tell me they were taking such a drastic step. One can't get gas in or out of the system.

Mr. Enright: Just a minute, if you please. If you want to go on the record, it's all right with me, Mrs. Hallberg.

Mrs. Hallberg: I'd just as soon.

Mr. Enright: Did you take it down, Miss Reporter?

(The record was read by the reporter.)

Mr. Whyte: Do you want to complete that answer?

Mrs. Hallberg: I would like to.

There was just one refrigeration unit out at the time, and I knew California Refrigeration had been called in. I was in the basement asking him about it and he said he was getting along fine. That was about 3:30 in the afternoon.

At 6:00 o'clock he found Mrs. Kennedy in a room's apartment having dinner, and informed her that he had let the gas out, and he later told me that he had been letting it out all afternoon.

Mr. Enright: Does that complete it?

(Mrs. Hallberg nods her head up and down.)

Mr. Enright: Q. Now, Mr. Hallberg, other than

(Deposition of Roy E. Hallberg.)

A. We had that matter of parapet at the terbury.

Q. To whom did you talk or discuss that lem with?

A. I went up there and went up to the checked the construction up there, and the apparently was in very good condition, and seeing the roof and what was recommended, de to contact the Building Department further, as a result of the contact with the Building De ment, a new recommendation was sent through the Building Department which was not quite involved as the first one was.

Their recommendation was not to interfere the parapet directly over the entrance-way and reinforce the parapet, which they suggested be which they would allow to be left, and to cut the balance of the parapet.

Q. Do you know if—

A. Incidentally, I might mention here that I no knowledge of any question on that parapet about the middle of January when the files sent to me by Mr. Richman. I thought I had had I thought I had received all the files concerning building, as ordered by the court, but Mr. Rich sent [76] me those afterwards.

Q. So your time was expended on the par wall problem after January, about the middle

(position of Roy E. Hallberg.)

any experience Miss Cosgrove had in the operation of apartments other than the real property you owned here in California?

Well, let me give you a little of her background. She is a graduate of the University of Minnesota School of Business Administration. She majored in economics, and you minored in——

Mr. Hallberg: In statistics and accounting.

The Witness: In statistics and accounting. She was in the investment field a good many years. In fact, she was one of two women investment counselors in New York.

Mr. Enright: Q. During what period of time?

Mr. Hallberg: '37 to '42.

The Witness: It was prior to '42, and in her right, she has carried through the decorating of a lot of our apartments and——

Mr. Whyte: By "our apartments," you mean the ones in Pasadena that you have mentioned?

The Witness: That we own, yes.

Mr. Enright: Q. That would be the El Molino, [77] units, and the 16 units, is it, at the Fairview?
A. Yes, and in New York and——

Well, what apartments did you have in New York?

No, our own apartment in New York.

Your own apartment, your residence she decorated.

(Deposition of Roy E. Hallberg.)

believe, Mr. Hallberg, concerning Mrs. Hallberg's experience, and you stated she was a decorator on her own right. She had decorated your home in New York.

A. Pardon me, and homes out here, plus the fact that she has a broker's license.

Mr. Whyte: What kind of a broker's license?

The Witness: Real estate broker's license.

Mr. Enright: Q. In California?

A. In California.

Q. Well, from 1942 what was the nature of her employment, if any?

A. Well, she was with me, assisting me in a number of my activities.

Q. Well then, as I understand it, the rental income property that she had experience with would be the El Molino, four units—— [78]

A. Yes.

Q. ——the Fair Oaks property,—how many units was that? A. 16.

Q. And the two units, or three units you mentioned at Seaview? A. Yes.

Q. Are there any others?

A. Well, as I mentioned before, our building back in New York.

Q. That was your home, wasn't it?

A. Yes, that was our home. She did that.

position of Roy E. Hallberg.)

Did you furnish these,—that would be the
and the 90 Glen Summer?

Yes, those were not furnished.

They weren't furnished, were they?

Well, let's put it this way. When we sold the
Glen Summer Road, our furniture was in there.
It was—she had done all the decorating there
the colors and color schemes and everything.
When we sold the house, we moved across the street
we again decorated it and furnished it.

She decorated and selected the colors for the
ous rooms? [79] A. That is correct.

The same for 218 Fernleaf, is it?

218, the interior. That is not a furnished
se. That's a speculative house. I might mention
that there was enough comment about our
Seaview that we got quite a write-up in the
l paper on it. That was—because of the decorat-

She decorated the exterior too?

Well, that was harmony, colors harmonized
everything.

Now, then, her experience is that of decorat-
these residences and—— A. Yes.

——and these units, 16 units and four units
El Molino and the Fair Oaks apartments, real
te broker, and a business counselor, is that it,

(Deposition of Roy E. Hallberg.)

Mr. Enright: Q. In New York City?

A. That is correct.

Q. What company was she associated with there if you know?

Mrs. Hallberg: Johnston & Lagerquist.

Mr. Enright: Q. Do you know, Mr. Hallberg, whether [80] or not her investment counseling was confined to the management of apartment rental income properties or rental income of any kind.

A. I can't answer that.

Mrs. Hallberg: I had a couple of clients, Austin Flint and the Cox family for whom we handled properties. * * * * * [81]

Mr. Enright: Q. In other words, you checked each one of the bills before you——

A. I always requested the bill be right and with it.

Q. And you would check the bill against it before [88] you'd sign? A. Yes, sir.

Q. That was your method of checking up whether or not an improper expenditure would be made?

A. The bill was supposed to have been checked and you'd just naturally rely on somebody else to do the checking, the same as any bookkeeping office will do, or accounting office. They have to rely on some of the people they have working for them.

Q. Yes. So you relied upon Mr. Harrison to

position of Roy E. Hallberg.)

Q. When they presented the bill and the check alongside of it, why, you quickly checked them, or what is necessary so far as checking?

A. That's right.

Q. And signed it? A. That's right.

Q. So they, themselves, that is, Harrison and Mr. Findeisen, would do the checking up on the expenditure that had been made for those materials for the services that were rendered?

A. I attempted to keep a pretty close check on these bills to see that the check covered the amount.

Q. Well, generally, didn't you do your checking on the operation of these apartments on the week ends, [89] Mr. Hallberg?

A. I did some of that.

Q. I mean, that was the rule, wasn't it?

A. Not necessarily.

Q. You'd come in on week ends, Saturdays and Sundays?

A. Not necessarily. I came in during the week evenings, as well as days. * * * * * [90]

Mr. Whyte: I note that my time slip for February 25 contains the following notation: "Telephone call from Camusi re termination of receiver-ship by settlement between [95] Richman and Mrs. Tidwell. Telephone call to Hallberg reporting on development and asking him to be present at

(Deposition of Roy E. Hallberg.)

having received that phone call from Mr. W
Mr. Hallberg?

A. Not as to the termination. It seems to
was Friday night that we received the call.

Q. Where were you on Friday, or Thursday
that week, if you know?

A. I couldn't tell you now.

Q. But you did receive the telephone call e
Thursday or Friday from Mr. Whyte?

A. Friday, some time Friday evening, I'm
sure, but I am not positive of the exact time.

Q. At that time did Mr. Whyte inform yo
to the results of the conference in Judge T
chambers? A. Yes.

Q. Did he advise you of the stipulation in
court order that had been made that day?

A. I think, as I recall the conversation, it
summed up in the fact that he stated that rece
ship had been terminated and we were to ac
cordingly, and it was going to be taken over by
Camusi and his client.

Q. You did not collect the rents during tha
riod [96] Saturday, Sunday, and——

A. Well, there is a good reason for not co
ing rents on Saturday, for the simple re
that——

Q. I appreciate that, Mr. Hallberg. I just

position of Roy E. Hallberg.)

e Witness: Friday was the last time we collected rents. * * * * * [97]

Now, what I am driving at is this, Mr. Hallberg: It's clear that you were up at the office in Oliver Cromwell on the 27th or the 28th. At that's the date of the checks; that's what I'm going by. That's a Saturday and a Sunday, is that right, Mr. Hallberg?

Mr. Hallberg: Those were post-dated.

e Witness: Those were post-dated checks, I understand.

Mr. Enright: Q. Well, you signed the checks after receiving this telephone message from Mr. Hallberg, is that right? [98]

No, no. No, those were signed before, and as understood from the court, that any payments that were due were to be made; any bills incurred were paid.

Where were you when you obtained that understanding?

Mr. Whyte got that information—no, we got it in our call to Judge Tolin.

Mr. Whyte: Judge Tolin.

e Witness: Judge Tolin, and he instructed me to pay the bills that I had incurred——

Mr. Enright: Q. When was that?

——had been incurred. I didn't hear what

(Deposition of Roy E. Hallberg.)

Q. That would be February 28? A. Yes.

Q. Did you talk to Judge Tolin at that time?

A. I did, and—Mr. Whyte who was at my house then talked to him.

Q. What were your instructions on February 28 concerning these—

A. Mr. Whyte got the instructions.

Q. What were you told to do by Judge Tolin?

A. To keep the moneys and to pay the bills that had been incurred during the month—during receivership. * * * * * [99]

Q. Well now, the \$2,000 plus on the Oliver Company well wasn't payable till March 1st. You knew that, didn't you?

Mr. Whyte: Are you speaking about the payment on the trust deed now, Mr. Enright?

Mr. Enright: Yes, precisely. I'd like to know where we are going to come out on that \$2,000. I don't know why this man paid it out.

The Witness: You don't?

Mr. Enright: Q. No.

A. It's very simple. First of all, the interest was included in that was for the month—that is, the interest that was due, and that's due from the month preceding, and—

Mr. Whyte: Which month do you mean by "the month [102] preceding"?

The Witness: Well, the date—

position of Roy E. Hallberg.)

ment for the balance which was to be paid on 1st of March, if I remember correctly; and I had to get those in in time. It's normal process to get your checks in on time, especially when it comes to something like that. * * * * * [103]

Mr. Enright: Q. But you do think, your best recollection is that those instructions were given at the time these particular checks, including this Cromwell check for \$2,000—

No, that was sent out—made up in the normal course of business, that \$2,000 check was.

And mailed out before the 28th?

Why, naturally.

Oh, naturally it was?

Why, of course. Supposed to be in there, in the office, on the 1st.

I see. Well it's dated the 27th here. It wasn't mailed before the 27th, was it?

It could have—it could have been the 27th [104] the 28th, the 27th it was mailed out, but pretty hard to—

Well now, really, Mr. Hallberg, will you step over here and examine these stubs here. You didn't cash these checks out before the dates they bear on here, the series of check starting with the number 425 and the 28th and the payroll checks that go on after that?

(Deposition of Roy E. Hallberg.)

The dates you make out your check, you may have sent it out that same day. * * * * * [105]

Mr. Enright: Q. Well, here you have a memorandum that may throw some light on this. Under your item—pardon me just a moment—page 7, it reads as follows: “On Friday, February 25—

A. Yes.

Q. —the reports of the three apartments, Oliver Cromwell, the Fountain Manor, and the Loma, were checked out.” A. Yes.

Q. “The Western Arms and the Canterbury managers reported that they had so much outstanding they would prefer to make the collections on the week end. It is not good business to make collections when the banks are closed. The apartment houses had safes for safekeeping the receipts, whereas the receiver’s office had none. The receiver was advised by his attorney to act in no capacity until the morning of March 1st, Monday, and consequently the March 1st funds on hand could not be picked up. The receiver’s report mentioned this only in relation to the total receipts for February, not being complete for comparative purposes.”

Now, is that the reason, as stated here, why you did not pick up the moneys from the two apartments on March 1st? [106] A. That’s right.

Q. I see, so it was upon advice of your attorney.

A. That’s right. * * * * * [107]

position of Roy E. Hallberg.)

Examination by Mr. Enright that you had owned apartment [115] building in South Pasadena consisting of 16 units and an apartment building on South El Molino in Pasadena consisting of four units, is that correct? A. Correct.

What work, if any, did you or Mrs. Hallberg have in connection with those apartments?

You speak of work. You mean physical labor?

Physical labor, management, decorating, painting—any type of work.

Well, that 1509 required complete renovation. We ripped up the carpets; we hung new doors in the garages; we repaired the roof; we repainted the hallways; we redid the apartments. We put in water heaters. We put in new stoves.

By “we” you mean yourself and Mrs. Hallberg? A. That’s right.

Go on.

Painted a lot of the apartments.

Examination by Mr. Hallberg: All of them.

Examination by the Witness: Or painted all of the apartments, and by “painting” I got in and wielded a brush and laid floors. I did that.

Examination by Mr. Whyte: Q. What did you do in connection with the South El Molino property in Pasadena?

Well, we did practically the same thing there.

Examination by Mr. Hallberg: Took the porches off. [116]

(Deposition of Roy E. Hallberg.)

A. Well, I—while going to school, I did public accounting work for an accountant in Chicago, J. L. Malby, and I did that part time.

Q. Did you take any accounting courses during your tenure at Northwestern University?

A. Naturally. Took two years of accounting.

Q. In connection with your duties surrounding this receivership, what if anything did you do in reference to the preparation for tax returns that were filed?

A. Which tax returns are you referring to?

Q. I am referring to the tax returns which were filed on or before March 15 of 1954.

A. Well, we filed a fiduciary return.

Q. What did you do in connection with that return?

A. Well, had to take the figures for the year and combine them with the last month in order to make a complete return for the year.

Q. In connection with the preparation of that return, did you interview any employees of the Director of Internal Revenue?

Mrs. Hallberg: Yes.

The Witness: Yes, we contacted them, because of some [117] questions that we had about the filing of the return.

Mr. Whyte: Q. Again in connection with your active duties of management of the properties

osition of Roy E. Hallberg.)

e apartment, or the exterior condition of the
ment building?

Well, after a heavy rainstorm we got quite
of rain in through the side, one side of the
ing, and water was coming in where the caulk-
ad been giving away.

Go on.

There was quite a few apartments that had
e running down the walls and it spoiled some
e decoration there. Water also came in around
indow panes where the putty was giving way.

Anything further that you did toward in-
ing or assessing, assaying that condition?

Well, at the moment it's pretty—can't recall
more on that other than calling in several con-
ors to give us bids on repair.

Is that all, Mr. Hallberg, that you recall at
ime? A. Yes.

. Whyte: I have no further questions. [118]

Redirect Examination

Mr. Enright:

Mr. Hallberg, since doing part time account-
while attending Northwestern, you have not
ered services as an accountant to anyone, have

A. Not as a public accountant.

No, or any other accounting?

(Deposition of Roy E. Hallberg.)

Q. Accounting at Morgan Construction To

A. Yes.

Q. Now that would be the only other account until you reached this Richman trust matter?

A. That's right, except that in every administrative job one deals with accounting records.

Q. In December?

A. Of course, I had to keep my own record of the various apartments, our own buildings. I had those. * * * * * [119]

Q. Well, didn't you discuss these operating expenses with your attorney or Judge Tolin——

A. Oh, yes.

Q. ——or Mr. Camusi, or Mr. Yudall before they made out those checks or signed those checks on March 7? A. Yes.

Q. Well, now which one of the persons did you discuss it with?

A. I discussed that with Mr. Whyte.

Q. When, with reference to the time the checks were made out on March 7th?

A. Well, prior to the checks, I can't tell you an exact date.

Q. That was during that first week after you were relieved as——

A. Yes, that's right.

Q. ——as active receiver—— [123]

osition of Roy E. Hallberg.)

Did Mr. Whyte at that time tell you that Camusi wanted the bills paid?

I don't recall any such statement other than such as those bills were incurred under my direction of the buildings, they were more or less responsibilities to have them paid.

Well, who told you that?

Mr. Whyte.

When did he tell you that?

Oh, in our discussions there right after the partnership ended.

Was that before you talked to Judge Tolin the Sunday evening after playing golf?

Yes, I think that was—it was confirmed by Judge Tolin.

What do you mean by the use of the word "confirmed;" is that what he told you?

That's ostensibly the same thing in the connection with Judge Tolin, and which Mr. Whyte derived from him that night.

Mr. Whyte didn't tell you what I said or I told him, that the bills should not be paid; that the purchaser was going to pay the bills after February 28th? [124]

Yes, he mentioned your having a different opinion. * * * * *

Enright: Q. Now, Mr. Hallberg, you have

(Deposition of Roy E. Hallberg.)

your attention to the day of November 30, my question is: When was that entry written, on the day after that date?

A. Oh, I think this was written about a day or two later. [125]

Q. I see. Now, directing your attention to the notations appearing after December 1st, when was that written?

A. The same time, and some of the——

Q. You haven't answered my question. Well, go ahead and explain if you want to.

A. Yes, I was going to say that those are written at night after I got home, and I got the reports from Mrs. Hallberg, and they are, speaking of the notes throughout that book,—some of the information and data was taken from notes I had on the backs of envelopes and activities that happened during the day that Miss Hallberg had, Mrs. Hallberg, and more or less compiled to get a general idea of what happened and transpired during that time.

Now, they, for the most part—those were written up almost every evening. Once in a while I did pick them up the next day or two days later.

Q. So, if I understand this correctly, for the most part the notations here that are entered in this book on these various different dates commencing November 30 and ending, I believe, February 23, are those that were written up by you?

osition of Roy E. Hallberg.)

ose respective days were made in this book in evening at your home, is that right? [126]

That's right.

Yes, and they would be made after you had ved a report from Mrs. Hallberg, is that right?

A good many of them would be. A lot of entries in there are as a result of my activity.

Yes.

But they were for the most part compiled arriving home.

Yes, after who would arrive home, you would e home, or Mrs. Hallberg?

Either myself and Mrs. Hallberg.

In many instances you and Mrs. Hallberg d not be together during the day?

That is correct.

And Mrs. Hallberg would be in Los Angeles ding to the problems relating to these different ment houses? A. Quite often.

And in the evening when she would arrive at , why, she would tell you what had occurred?

As for—we discussed the problems she had ntered during her visits to the various build- and we'd decide—we made a lot of decisions ght as to what to do.

Now, the procedure was——

(Deposition of Roy E. Hallberg.)

Richman's, but I certainly had somebody with who knew——

Mr. Whyte: I think you have answered question.

The Witness: All right, thank you.

Mr. Enright: Q. So, for the most part, it would be Mrs. Hallberg that would go around to the houses and ascertain what the problem was, make the decision as to how the house should be kept, and then she'd report it to you in the evening, is that right?

A. Partially correct—I made decisions and controlled the property involved when important problems were involved.

Q. Well, that's usually what occurred, isn't it?

A. No. I can't say it's usually.

Q. Now, during the day, usually you'd go to Santa Ana, isn't that right; that would be most of the days?

A. Some days; some days I wouldn't be in Santa Ana. You notice—in fact, I met you in town during the week, so I did come in quite often during the week.

Q. Yes, you met me in town once at the School Board. A. That's right.

Q. And at the time of the hearing on the application for the Renovation, is that correct?

A. That's correct.

position of Roy E. Hallberg.)

You did come in to town the day we met
at the City Prosecutor's Office?

That's right.

And you did come in to town the day you
filed on the Renovation Petition?

That is correct.

Well, other than those two days, did you
come in during the week that you can remember

? A. Quite often.

Now, these notations that you have written
here reflect your thinking and knowledge at
the time that the events occurred, isn't that right?

That's not clear, I——

That's, I'd say fairly accurate, yes.

Well, these notes were your best——

To the best of my——

To the best of your ability, you wrote down
the problem was and what you had done dur-
ing that particular day?

That is correct, uh-huh.

So if we were to study these notes between
the time of hearing, we could review and
obtain the problems that you were confronted
during your term as receiver?

Not all the problems. [129]

Well, what problems didn't you write down
that you can recollect now?

(Deposition of Roy E. Hallberg.)

tracted with for services that aren't reflected there.

Q. But those would be minor things. Any major item, or any major problem——

A. For the most part, the major things entered. * * * * * [130]

Mr. Enright: Q. Now, Mr. Hallberg, you reflect, do you, verifying the Petition for Authority to Renovate [131] the various apartments?

A. Yes.

Q. You remember testifying in support of that petition, do you? A. Yes.

Q. Did you personally interview the manager concerning the vacancies that you testified concerning on the hearing of that Petition to Renovate? did you obtain that information from Mrs. Hallberg?

A. Some of that information I obtained directly and some through Mrs. Hallberg.

Q. Has Mrs. Hallberg been paid by you for her services in assisting you in this receivership?

A. Did you hear that question?

Mr. Whyte: Yes, I heard the question. I think you can answer it.

The Witness: Why, no.

Mr. Enright: Q. Have you made some arrangement with her for her services? A. No.

Q. None whatsoever?

sition of Roy E. Hallberg.)

No, I did not.

(There was a brief interruption.) [132]

Enright: Q. Well, Mr. Hallberg, was it intention when you became receiver here to take the routine matters to your wife, Mrs. Hallberg?

Well, inasmuch as she is a qualified and licensed broker, is quite familiar with all the details concerning an apartment building, I certainly expected to use some of her services and abilities.

* * [133]

Now, directing your attention to the \$40,000 per year that you state you received for three or four years while employed by the Garrett Company in New York, did that company pay you that salary itself, or did you receive a portion of that salary as commissions from third [137] persons?

That was from Garrett & Company itself.

Your principal activity in representing Garrett & Company was in the marketing of its wines through wholesalers or retailers, isn't that right?

Correct.

And the principal marketing was carried on in New York City or Brooklyn, if that is a part of New York, metropolitan New York?

I think I stated previously that I controlled the entire State of New York. * * * * * [138]

[Title of District Court and Cause.]

DEPOSITION OF JOHN WHYTE

Taken at Los Angeles, California, April 22,
before Kathryn A. Kirby, Notary Public.

JOHN WHYTE

having been first duly sworn, deposed and testified
as follows:

Direct Examination

By Mr. Enright:

Q. Mr. Whyte, your petition for attorney's fees
enumerates the dates on which you made telephone
calls, is that correct?

A. If I may be permitted to examine the
petition—

Q. Well, I will aid you. Page 3, line 26
made a telephone call to Mr. Camusi concerning
the receivership development.

A. That's right.

Q. Now, noting the wording, as for example,
only, Mr. Whyte, of that occurrence on December
2nd, that recitation on page 3, line 26 in your
petition for Fees is substantially taken from your
time sheet for that day of December 2nd?

A. I believe so. If you will permit me, I
examine my daily time sheet.

Q. That I want you to do.

A. My daily time sheet for December 2nd,

position of John Whyte.)

Yes. Now, bearing in mind that time sheet [?] yours of December 2nd and also examining petition there, are you quite sure that in substance your petition, so far as time expended is concerned, is a recitation of your time sheets?

This petition was prepared so far as the nature of the services performed and the amount of time expended, from the daily time sheets kept regularly as part of the office procedure in my office.

The dates of telephone calls and the substance of the telephone calls reflected in your petition is a reproduction of your daily time sheets, is it right?

It may not be an exact reproduction, but it is based upon the daily time sheets.

Your petition reflects the substance of all entries in your time sheets?

I think that's a fair statement.

Well, that was your intention when you prepared it? A. Yes, certainly.

So by an examination——

All or substantially all of the entries in my time sheets.

You didn't intentionally leave out any entries on your time sheet, did you?

Not that I can recall.

So it would only be by close analysis, and if [?] are any left out, you didn't intentionally

(Deposition of John Whyte.)

A. Not that I recall.

Q. So by examining your petition we can ascertain the number of phone calls that were to and from the various persons to whom talked on the phone?

A. There may have been occasions upon which I failed to note on my time sheet every phone call which I made or received.

Q. But the time sheet that you prepared at that time is the best evidence of what did occur at that time?

A. The best evidence I have now, yes.

Q. Yes, and you would have to just strain your memory to try to recollect something that you didn't write down on your time sheet?

A. I certainly would.

Q. That's what I meant. That would be true of conferences that you had that are reflected on your time sheet, and in turn are reproduced on your petition, conferences?

A. Yes, the conferences are reflected in the petition based upon what was noted on the time sheet.

Q. Now, you were in court on February 26, 1964, you, Mr. Whyte, at the conference in chambers?

A. My daily time sheet for February 26, 1964, states that I attended conference in Judge Tamm's chambers [4] re settlement of case.

Q. Yes.

A. I recall that was said by Mr. Gorman.

osition of John Whyte.)

that was signed by Judge Tolin on that day
nating Mr. Hallberg's active duties and direct-
im to retain possession of money in the bank
under the control of the receiver?

Yes, I believe such an order was handed to

And you have it now in your file there,
n't you? A. I do.

Yours, I believe, is undated. No, it has the
date at the bottom, February 26.

That is correct.

That was about 4:30 in the afternoon, or
o'clock in the afternoon, as I remember it, but
s in the afternoon anyway?

No, the conference was in the morning. It
at about 9:30 o'clock in the forenoon of Feb-
26.

I stand correct. My memory had failed me.
directing your attention to your petition or
time sheets, whichever you prefer, on Febru-
5 you called Mr. Hallberg concerning the set-
nt; that's page 11, line 7 of your petition. [5]

I have a rather definite recollection of that
er.

Before calling Mr. Hallberg on that date,
received a telephone call from Mr. Camusi.
's on——

(Deposition of John Whyte.)

ceivership by settlement between Richman and Tidwell. That call came to me at a few minutes before 5 o'clock in the evening. I then attempted to reach Mr. Hallberg's residence at Corona Mar by calling Harbor 3818 and obtained no answer.

I finally reached one or both of them at a time later in the evening.

Mrs. Hallberg: Yes, 8:30 at night.

Mr. Enright: Q. That's on the 25th?

A. Correct.

Q. Yes. Now on the 26th, you——

A. I told them, incidentally, at that time I was—I had been informed that the receivership was being terminated, and that I was to meet them in Judge Tolin's chambers the following morning.

Q. In other words, on the 25th you told them that? A. Yes.

Q. Now, on the 26th you reported to Mr. Hallberg [6] and Mrs. Hallberg the results of the conference in Judge Tolin's chambers, February 26.

A. I note from my time slip that I received a telephone call from Mrs. Hallberg asking me what had taken place at the conference.

Q. You expended no time of your own on February 27 and 28; that's the Saturday and Sunday after that Friday phone call to——

osition of John Whyte.)

vance of Fees, as well as the attorney's Petition for Allowance of Fees, and a proposed form of Notice of Hearing on those two reports and petitions as necessitated by the court's order of February 26th relieving the receiver of his duties as of February 28.

Other than that expenditure of a half hour, and I assume was at your office or your home, were no other services rendered on the 27th of the receivership?

None on the 27th, and I have no time slip for the 28th.

That would be a Sunday. You next consulted Mr. Camusi, or he contacted you, rather, on March 1st?

If I may refer to my time slips for that date, I will say yes.

Yes. [7]

My time sheet for March 1st shows that I consulted Mr. Camusi with regard to the problems connected with the turnover of the assets to Mrs. Tidwell, the payment of bills, and other matters.

Will you state the substance of that conversation as best you recollect it?

I don't have a definite independent recollection of that conversation, Mr. Enright. However, I think one of the subjects discussed was the prob-

(Deposition of John Whyte.)

not be received until on or shortly after the 1st of March. I say, I think I discussed that with you because there is a further notation on my March 1st time slip that I called you regarding the listing of creditors and the amounts of their claims in the Receiver's Report.

Q. That was the substance of the telephone conversation to me as to the listing of the creditors of the Receiver in the Receiver's Report, wasn't it?

A. I—as I recall, I explained to you that the Federal rules, local court rules required a listing of creditors and the amounts of their claims.

Q. That's right.

A. That I was in doubt as to how best to handle that [8] with reference to persons who were creditors as of the close of business on February 28, 1968, but for whom we did not have an amount of claim because their bill had not yet been rendered.

Q. And is that all you recollect of the conversations with Mr. Camusi and with myself on March 1st?

A. I must have discussed some other matters with Mr. Camusi, because my time slip says, "problems connected with turnover of assets to Tidwell, payment of bills, et cetera." What I discussed to Mr. Camusi about the problems connected with turnover of assets I don't recall.

Q. You did discuss with me, though, the li-

sition of John Whyte.)

from the various managers; isn't that right?

I don't recall that you told me that the amounts could be obtained from the various managers.

If you did, I'm sure you must have been taken, because the amounts could only have been obtained from the creditors themselves.

No discussion about the managers knowing they had purchased during the month of February? Does that refresh your recollection at all?

I can't recall.

Yes. Now you next had a conversation with Mr. Camusi on March 2nd, is that right?

If I may refer to my time slip for that date. In my mind, Mr. Enright, that it's possible that there may have been telephone conversations which were had either with you or Mr. Camusi which are recorded on these time slips, but I think I have that substantially all of the conversation are here.

That I understand.

Yes, on March 2nd I received a call from Mr. Camusi regarding title documents to be turned over to Mr. Tidwell and regarding the receiver's accounting.

On the same day you received a call from Mr. Cosgrove, is that right?

I did. I recollect that Mr. Camusi asked me

(Deposition of John Whyte.)

were owned by the receivership. He asked v those were kept. I telephoned Mrs. Hallberg, she told me that they were kept in a safe de box at one of the banks.

I then think I called Mr. Camusi and arra for the delivery of those documents to his by Mr. and Mrs. Hallberg.

Mrs. Hallberg: Just Mister.

The Witness: It seems to me that Mr. Hal was [10] going to stop by the bank and them up.

Q. On March 3rd, your notes show no ser being rendered, do they?

A. None on March 3rd.

Q. March 4th you talked to Mrs. Hallberg you, on the subject of payment of post-Febr bills?

A. Yes, I did.

Q. That is on March 4th?

A. Yes.

Q. What was that conversation?

A. All I can recall, being refreshed from notation on my March 4th time slip, is tha discussed this question of paying bills for ser rendered on or prior to February 28 where the had not yet been received, or had not been rec until after February 28.

Q. And you had a phone conversation on M 4th with Mr. Camusi concerning that same su matter, did you?

sition of John Whyte.)

Camusi and to Mr.—yes, to Mr. Camusi and Enright re these matters. I believe that one matters must have been this——

Post bills, February bills? [11]

Yes, February services—bill didn't come in March 1 or after.

That's right, and what did Mr. Camusi tell in March 4th on that subject matter?

I can't remember.

What did I tell you on that subject matter?

It seems to me that you expressed the opinion then or at the time I talked with you on 1st that you felt the bills should not be

Yes, and Mr. Camusi, didn't he tell you in conversation of March 4th or after February conversations as related to your time sheets they would not pay those bills?

Yes, you refresh my recollection. Mr. Camusi me either in substance or in effect some time those early days in March that he or his didn't desire to pay those bills. In fact, I Mrs. Hallberg told me that Mr. Udall would pay the bills, something to that effect.

. Hallberg: Wanted us to do it.

Witness: And wanted Mr. and Mrs., or Mr. erg to do it.

(Deposition of John Whyte.)

Mr. Enright: Do you recollect when, or
Mr. Udall said on that subject, Miss Cosgrove
Mrs. Hallberg?

Mrs. Hallberg: Yes, Mrs. Hallberg or Miss
grove.

Mr. Enright: Yes.

Mrs. Hallberg: On March 1st when he came
the office, he wanted us to pay all the bills but
they were our concern.

Mr. Enright: That is, Mr. Udall told you

Mrs. Hallberg: Yes, and there were one or two
things that we had a question on that weren't
satisfactory, and he wanted us to write checks to
hold them on those.

Mr. Enright: And did he say anything
having picked up the money for the week ended

Mrs. Hallberg: Yes, he expressed the manner
which has validity——

Mr. Enright: Well, I am not concerned——

Mrs. Hallberg: ——inasmuch as it is on a
basis, and of course if the rent was paid on a
day and applied to March, he thought they
to pick up the money.

Mr. Enright: Now, would you tell me your
recollection of what he said to you?

Mrs. Hallberg: That was exactly what he

Mr. Enright: He told you that it had val

Mrs. Hallberg: No. That was my comment

position of John Whyte.)

After all, the buildings were carried on a cash and because the rents at any one day did not to any one period, he felt that they should up those rents, and he had so directed the gers.

Whyte: By "those rents" you meant what, Hallberg?

s. Hallberg: What had been picked up over week end.

Whyte: For February 26, 27 and 28?

s. Hallberg: Yes.

Enright: Now, continuing, Mr. Whyte——

Whyte: Off the record.

(A discussion was had off the record.)

Enright: She would testify the same if she under oath, I am sure.

s. Hallberg: Yes.

Enright: Q. Now, Mr. Whyte, your next as to telephone calls apparently is March 9?

No. I made a telephone call to Mrs. Findeisen the 5th of March.

That's correct, my error. Yes, it is, to Miss isen on March 5th.

That's right. [14]

And your next, after March 5th phone call ss Findeisen, is March 9 to Mr. Camusi?

Speaking only of phone calls now?

(Deposition of John Whyte.)

counts and the payment of bills rendered on the first part of March.

Q. Now, you had a conference on March 7, and your time sheet show the March 7 conference, is that the way? I don't—

A. Yes, I had a conference with Mr. and Mrs. Hallberg at their home in Corona Del Mar on the evening of March 7, which was a Sunday, regarding the problems incident to final accounting and preparation of schedules.

Q. Is that the day on which you phoned Judge Tolin?

A. Yes. We had returned from dinner at the nearby Country Club. We began discussing the bills matters. Among others we discussed the subject of paying bills which did not come in until after the first of March covering services rendered on materials furnished during February. Mr. Hallberg then called Judge Tolin and spoke with the Judge about several matters.

He then handed the phone to me, and I discussed the subject with the Judge, who instructed me to have those bills paid by Mr. Hallberg. In fact, as I recall correctly, Judge Tolin, I think, made the same instruction [15] to Mr. Hallberg. All I heard were Mr. Hallberg's replies to the Judge, and it seems to me they were discussing the same subject.

sition of John Whyte.)

s residence and you heard him mention the
t matter of paying these bills?

I think he did. Yes, I think he did mention
subject matter.

Do you recollect what else he said, if any-
that is, Mr. Hallberg?

I can't recall.

Now, you in turn talked to Judge Tolin at
ime? A. I did.

Did you tell him that Mr. Camusi and I had
to you concerning this subject matter and
e the court or the Judge that there was a dis-
between us?

I believe I did. Yes, I think I told the Judge
Mr. Enright had objected to their payment;
Mr. Camusi was amenable to the payment, or
ne wanted them to be paid by us.

Well, did you use the word "amenable"

I—I can't remember what word I used, Mr.
ht, but the substance of what I said was that,
y best recollection brings it back to me, that
16] didn't wish the receiver to make the pay-
s, and that Mr. Camusi either did or was agree-
to it.

And did you tell him also that Mr. Udall
requested Mrs. Hallberg to pay them?

(Deposition of John Whyte.)

utilities, and things of that nature as shown on Exhibit C?

A. I didn't—I had no idea as to the detail of bills. I—what they were, specific items had rendered or services performed, I didn't discuss.

Q. You didn't know, is that the——

A. I don't know; I don't think I knew. I don't know that they covered, or Mr. Hallberg had reported that they covered services rendered or materials delivered during the month of February for which no billing had been received until on or after the 1st of March. [17]

* * * * *

Q. Did you realize or know that there was a \$6,000 involved in that transaction?

A. In what transaction?

Q. In the payment of these bills after March 1954. [18]

A. Before I answer, may I check my time here to see whether I had notified you?

What was the last question, Miss Reporter?

(The pending question was read by the reporter.)

The Witness: I note from my March 10 slip that I conferred with Mrs. Hallberg and Findeisen, the bookkeeper, at the Oliver Cron regarding the Receiver's Final Report to the Court and the makeup of the schedules to be attached thereto. I had no idea of the amount involved.

sition of John Whyte.)

liabilities incurred prior to February 28, but not prepared until after that date, was ready at the time I discussed the matter with Hallberg and Mrs. Findeisen on March 10.

Enright: Q. And you further conferred with Mr. Hallberg on March 13, going over the report and the schedule, didn't you? A. No.

I am taking that from your petition on page 10. On March 13 you have listed there as a person being rendered going over the report and schedules. I assume it to be of the receiver.

Just a moment. No, both my petition and my sheet for March 13 state "Going over draft report and schedules to be attached thereto by the [19] receiver."

That's what was my question, went over them with the receiver, Mr. Hallberg. A. Yes.

On March 13. A. That's right.

Then the next date you rendered services was March 15 concerning the subject matter of petition No. 15. You had a conference with Judge Tolin? I did.

And the next day——

May I amplify my answer? On March 13 Mr. Hallberg came to my office, and we went over a yellowraft of his final report and schedules, which were hereafter prepared in final form and mailed for signature

(Deposition of John Whyte.)

Q. Your next rendition of services is on March 15 when you had a conference with Judge Tolin.

A. I did.

Q. And that is concerning fees? A.

Q. Who was present?

A. I was the only person present.

Q. What was said? [20]

A. To the best of my recollection, I asked Judge Tolin whether or not he desired that I name a specific amount in my petition for fees. That question was prompted by the fact that Judge Tolin had instructed the receiver not to name a specific amount in his petition for fees.

Q. When was that instruction given to the receiver, Hallberg, if you know? A. I do not know.

Q. When were you advised of it?

A. That I don't know either. I know that Judge Hallberg so advised me at one time.

Q. Now the next day you rendered services on March 17. You phoned Mr. Camusi concerning closing the receiver's books? A. I did.

Q. At no time did you inform me or Mr. Camusi of the direction given by the court as you stated on March 7, Sunday evening, 1954, is that correct?

A. Not that I can recall. By that, you mean no time prior to the filing of my—of the receiver's first and final report and petition for fees with the court and the mailing of a copy thereof to you?

Q. Was there anything else said by Judge

sition of John Whyte.)

Yes.

How long did the conference last?

It was a very short conference, because Judge was about to take the bench.

What is "very short"?

Well, I'm sure it didn't last—I had another before Judge Tolin at the time concerning Anglewood Federal Savings and Loan Association. To the best of my recollection, that was the last matter which I discussed with him.

What is "very short" was the question, Mr. [?]

Whatever conversations I had with the Judge regarding my petition for fees were less—were five minutes or less, to the best of my recollection.

And all you recollect that was said in that five minutes or less is that you asked him whether you should specify an amount?

And his reply.

And his reply? A. Yes.

And——

His reply was that—my recollection is recalled a bit by your question—his reply was that something to the effect that—strike that.

I recall that the question of extraordinary services was discussed. Judge Tolin said something to the effect that the defense of the receiver on the subject of the petition was not a proper subject for discussion.

(Deposition of John Whyte.)

Q. You had explained that to him, had you subject matter which resulted in his statement?

A. Yes. In fact, at the time I first learned the criminal citation on or about February—about January 29, I believe that I telephoned J. Tolin and discussed the matter.

Q. The Smog Control and the Air Pollution matter and the contracts pertaining to it were considered by you during the period about December 23 of 1953—

A. Yes, the day before.

Q. Wait until I finish now, because I want to leave it open; I don't want to pinpoint the date and the end of December, that last week in December of 1953, that subject matter of the Air Pollution contracts—well, specifically, if you would look it up, December 28, 1953, page 5, line 3 of your petition.

A. My December 24 time sheet reflects a conference I had with Mr. Hallberg at the Cromwell the day before Christmas in the afternoon which lasted for about—my trip out and back—conference lasted for two and four-tenths hours.

Q. That is in the afternoon you know?

A. It was after lunch. Yes, I had lunched at the University Club that day and played dominoes with some of my old friends from O'Melveny Myers. Mr. Hallberg asked me to examine the contracts with reference to Mr. Richman's contracts to

sition of John Whyte.)

And you returned them to Mr. Hallberg several days later?

I did. I wrote a letter.

That would be about December 29 that

I wrote a letter dated December 30, 1953, to Mr. Hallberg.

Enright: December what did he say?

Witness: December 30, returning the files regarding the installation of incinerator equipment at the Canterbury and the Oliver Cromwell apartment buildings.

Enright: Q. What did you advise him orally or in writing on that subject matter?

I advised Mr. Hallberg orally, I believe, that after he examined the files, it was my opinion that the contracts were binding contracts, but that he had no obligation to pay the balance of the purchase price until after the equipment had been installed and approved by the Air Pollution Control District, at which time he became—would become liable for 90 per cent of the balance of the [24] purchase price which amounted to 90 per cent of the original

Did you inform him in any manner as to the time of performance or as to the subject matter—
as to time of performance?

(Deposition of John Whyte.)

Q. Did you inform him or advise him in any respect concerning the subject matter of this elimination of smog was a subject for criminal prosecution and ordered by the Los Angeles District Pollution Board? A. I did not.

Q. Did you realize that there was such a problem; that is, elimination of smog from these particular apartment houses at that time?

A. I don't recall that I knew anything particular about the smoke condition at the apartment; I knew only that this—these contracts had been signed and that the installation was to be made.

Q. And that the payment under the contract was conditioned upon the Air Pollution Board approving the installation; you saw that in the contract, didn't you? A. I did.

Q. And you knew then, didn't you, that the [25] Pollution Board was going to make a contract for a test, investigation of the installation, didn't you?

A. I did.

Q. Did you know that it would be a violation if that installation wasn't installed?

A. I suppose I did.

Q. Did you advise Mr. Hallberg?

A. I didn't discuss the question of installation with Mr. Hallberg. I so testified.

Q. That I appreciate, but you haven't so testified until now that you didn't advise Mr. Hallberg.

sition of John Whyte.)

No. Now, did you know that during January the performance of that contract was being held up?

I had no knowledge whatever that the performance of that contract was being held up. I——

Mr. Hallberg never asked your advice on that matter at all, did he?

I have neither no knowledge now, nor have reason to believe that it was being held up.

* * [26]

Have you your time sheets there, Mr. Whyte?

I have.

May I examine them again?

(The documents were handed to Mr. Enright.)

Enright: Now, it was your practice, wasn't it, Mr. Whyte, to make a notation as to the amount of time expended during a particular day——

Witness: It was.

Enright: Q. ——by tenths of an hour?

As nearly as I can figure it.

Yes. So if we were to read off the time specifications on each of these time sheets, we would get the amount of time expended on the particular day, is that right? A. That is correct.

Well, then, I would like to read into the record the time expended on the respective days

(Deposition of John Whyte.)

Q. Now, commencing on November 30 then 2.1 hours.

A. If it will be helpful to you, the green slips are my slips, and the yellow colored slips are my partner, Mr. Fitzpatrick's time slips.

Q. Yes. All right, so the first one being a slip where there appear the figures 2.1, meaning two and one-tenth—

A. One-tenth. [34]

Q. —one-tenth hours. December 1st, six hours.

A. Six hours.

Q. December 2nd, 2.3 hours. December—

A. 2.3 hours of my time, and one and one-tenth hours of Mr. Fitzpatrick's time.

Q. That's on December 2nd?

A. Right.

Q. December 3rd, six hours of your time. December 4th, seven-tenths of an hour of Mr. Fitzpatrick's time. December 7th, eight-tenths of an hour of your time. December 10, three-tenths of an hour of your time. December 12, three-tenths of an hour. December 16, four-tenths of an hour. December 17, two-tenths of an hour. December 18, 3.9 of an hour?

A. Right.

Q. December 21, three-tenths of an hour. December 22, six-tenths of an hour. December 23, one hour. December 24, 2.4 of an hour?

A. Right.

Q. December 28, four-tenths of an hour. December 27, three-tenths of an hour. December

osition of John Whyte.)

ary 9, four-tenths of an hour. January 11, one-
of an hour. January 15, 3.4 hours?

Right. [35]

January 19, 1.1 hours. January 25, 5.6 hours.
ary 26, 1.3 hours. January 26, two-tenths of
ur. January 27, two-tenths of an hour. Janu-
3, 2.2 of an hour. January 29, three hours?

That's true.

Those are all correct through January, my
ag of the number of hours?

So far as I have observed they are.

Yes. Yes. December 1st is 2.6 hours. De-
r 2nd—

This is February 1st, Mr. Enright.

Thank you, you are entirely correct. Febru-
is 2.7 hours. February 3, is 2.3 hours. Feb-
4th is 1.1 hours. February 5 is five-tenths
February 6 is two-tenths hours. February 8
r-tenths hours. February 9 is 1.2 hours. Feb-
10 is five-tenths hours. February 12 is four-
hours. February 13 is three-tenths hours.
ary 15 is 2.2 hours. February 16 is 1.7 hours.
ary 17 is 2.4 hours. February 18 is three-
hours. February 25, five-tenths hours. Feb-
27, five-tenths hours. February 26, one hour.
se are correct through February as I read

A. So far as I can see.

Yes. March 1st, 2.4 hours. March 2, 2.1 hours.

(Deposition of John Whyte.)

hours. March 11, seven-tenths hour. March 12, tenths hour. March 13, one hour. March 14, one hour. March 17, 2.5 hours. March 18, 1.8 hours. March 24 is 1.3 hours. March 25 is six tenths

April 2, three-tenths hour. April 7, four tenths hour. April 8, two-tenths hour. April 10, nine-tenths hour. April 12, 2.4 hours. April 21, six-tenths hour.

That is the time reflected upon your time sheet.

A. That doesn't include at least one and possibly two time slips since April 21 nor does it include one-tenth hour expended on April 16 and one-tenths hour on April 19. For example, it doesn't include the time spent in deposition here last Tuesday, which was April 22, was it?

Q. April 22, and today, April 24. Yes. That is correct. And you are asking to be paid \$3,000 for extraordinary fees for the smog matter?

A. To the extent that the court determines I should be paid.

Q. No, but you are asking to be paid \$3,000 for extraordinary fees, aren't you, Mr. Whyte?

A. Right. That is what my petition asks for, Enright.

Q. Yes, and that's the amount you are asking for?

A. That is correct. And I expect to ask for additional compensation for the time I have devoted and will devote to this matter since I filed my petition for fees on March 18.

sition of John Whyte.)

I think you will find—I will let the figures for themselves.

Well, your petition shows 90 plus hours, and want some \$3,000 ordinary fees for those 90 that are shown on your petition?

My petition shows 91 hours up to and in-
g, I believe, March 17 or 18.

Now, I note here on December 1st you spent
urs, and among other things you accompanied
Hallberg to Union Bank and Trust Company
“we conferred with Mr. Lipman, execu-

“Executive Vice-president and others re
man trust.”

Will you read on the rest of it?

“We opened a new account in the name of
E. Hallberg as receiver of the former Richman
Hallberg also signed an authorization to
e checks written by Mrs. Tidwell or Richman
on or before November 30, 1953, to the new
at.”

Go ahead.

“We then visited the La Loma apartments
we spoke to Miss Schumacher, the manager,
ted to her order appointing Hallberg as re-
and collected certain rents totaling \$787.50.
visited Fountain Manor apartment hotel,
t. Mrs. Linhardt exhibited order appoint-

(Deposition of John Whyte.)

release funds to Hallberg. Same at Cante apartment hotel. Spoke to Mrs. Polly Gregg Western Arms apartment hotel, spoke to Maude Kennedy. Drove 22 miles in my car said apartment managers."

Q. You were rendering legal services, were you, when you were going with the receiver to instruct the managers to turn money over to him?

Mr. Whyte: I will object to the question as argumentative, calling for the conclusion of the witness, and let the facts speak for themselves. I refuse to answer it on those grounds.

Mr. Enright: Q. Did you do anything other than is noted here in these notations you have read on December 1st, 1953?

A. I believe I have already stated that as to my time slips they reflect with substantial accuracy most, if not all, of the things which I did on each particular day. In some instances there have been minor omissions that I failed to put down on my time slips.

Q. Do you recollect any minor omission of things that you failed to put down on that December 1st time slip?

A. No, I don't recall anything else. Incidentally——

Q. You knew, of course, on that day that

sition of John Whyte.)

I think I knew that his bond had not been with the court.

Very well.

And if I may explain my answer further,

Go ahead.

These time slips are virtually in every in-
made out at the close of the day upon which
services are rendered. In many instances—in
most instances—I keep a running record
of the course of the day as I perform the par-
service; I note it on the slip. Then I review
the matters that evening and make certain
my slip correctly reflects what I have done
of the course of the day.

But you did do these acts on December 1st
you have noted on your time slip?

I did.

Yes, sir. Now, on December 2nd you ex-
d 2.3 hours. Will you read your notation
or so that it will be accurate from the read-
your own handwriting?

“Obtained form of petition for appointment
s firm as attorneys for receiver and form of
thereon. Dictating draft of petition and order
revising same. Conference with Hallberg re his
Telephone [40] call to Camusi for informa-

(Deposition of John Whyte.)

Q. And that reflects the things you did on December 2nd as best you can now recollect the that right? A. It does.

Q. Now, on December 2nd Mr. Fitzpatrick, partner—am I correct so far? A. Yes.

Q. That he is your partner? He expended an hour and a half in rendering the following service is that correct— A. Yes.

Q. —as noted on this note, this being written. Shall we read it, or give it to the reporter to have her copy it? A. Be glad to read it.

Q. All right, you read it then.

A. "Hallberg came in at 9:00 a.m. re his position as receiver. I telephoned Hecht at Fidelity and Deposit. He said that he had been asked last week by Richman to put up a supersedeas bond on appeal, that if a writ of supersedeas were issued he might not be able to collect the premium on the bond out of the assets of the receivership and therefore wanted to wait on the issuance [4] of the bond to see if a supersedeas were issued. I reported this to Hallberg. We agreed to wait an hour.

"After a while, Hallberg suggested that he go to Judge Tolin's secretary. He called her, but she told Judge Tolin, who said to get the bond in right away and that he would see that the premium was paid out of the receivership assets. I phoned Hecht

sition of John Whyte.)

led back in a few minutes and said he would
he bond. I gave him the title of the court and
and Hallberg went over to his office to get
nd. Whyte came in and I reported to him
had happened."

Now, on December 18, you expended 3.9
Would you read your notes as to what your
e consisted of on that day?

"Telephone calls to and from Mr. Harrison
ain facts necessary to preparation of petition
uthority to pay Christmas bonuses. Prepara-
nd verification of said petition. Telephone call
Camusi asking for information re progress of
ership. Telephone call from Hallberg re peti-
Clearing with Judge Tolin's secretary re when
can sign order. Presentation of petition
order to Judge Tolin ex parte in his court-
The Judge signed order. Left word for [42]
son to issue checks in payment of bonuses.
rence with Mrs. Hallberg re factual data
d for petition to renovate the individual apart-
as they become vacant. Telephone call from
son re manner of paying Christmas bonuses."
That reflects the services you rendered on
ay, December 18, does it not?

To the best of my knowledge, it does.

This is the only written record you have of
services rendered that day, isn't it?

(Deposition of John Whyte.)

Q. Now, on December 24 you expended 2.4
Would you read your notes as to services that
rendered on that day?

A. "Conference with Hallberg at Oliver
well re proposed petition for authority to re
apartments, transfer of fire insurance polic
a mutual company, report to be filed by re
does receiver have to carry out Richman's co
to purchase incinerator equipment, bookk
problems, and other matters."

Q. What were the "other matters" that yo
recollect at this time that were considered b
as attorney for the receiver?

A. I don't recall. [43]

Q. Have you any memoranda or record an
that will indicate what they were?

A. I do not.

Q. Now, the incinerator equipment refer
there is the equipment involved in the Smog
trol order or citation, criminal citation, isn't

A. It's the equipment specified in the con
which Mr. Richman made with Air Pollution
trol, Inc., covering installation of certain
control equipment in the incinerators at the
Cromwell and the Canterbury.

Q. On December 24, is it your recollection
the file was then given to you by Mr. Hallber
taining to that subject matter of the incine

sition of John Whyte.)

I took the files with me in my brief case
I left Mr. Hallberg's office at the Oliver
vrell.

Thereafter you read the file, did you——

I——

——and you noted the time you expended
t connection on your time sheets? I refer you
eally to December 28, being your next time
reading as follows: "Telephone calls from
o Harrison re construction of incinerator
ment for Canterbury and [44] Oliver Crom-
Also re handling of petition for authority to
te apartments." Is that correct, you did——

On December the 27th, the preceding day——

Well now, that is December 28th that I just
o you. A. That is right.

Now, on December 27, the next notation here,
seems to be out of order, but inadvertently,
sure, did you have something to do with that
t matter of the contracts?

Yes. My time slip shows examination of files
reference to installation of incinerator equip-
for Canterbury and Oliver Cromwell and lia-
of receiver to carry out contracts for such
ation.

And you expended three-tenths of an

—— A. I did.

(Deposition of John Whyte.)

Q. Now, on December 24 you expended 2.4 h
Would you read your notes as to services that
rendered on that day?

A. "Conference with Hallberg at Oliver C
well re proposed petition for authority to rene
apartments, transfer of fire insurance policie
a mutual company, report to be filed by rece
does receiver have to carry out Richman's con
to purchase incinerator equipment, bookkee
problems, and other matters."

Q. What were the "other matters" that you
recollect at this time that were considered by
as attorney for the receiver?

A. I don't recall. [43]

Q. Have you any memoranda or record any
that will indicate what they were?

A. I do not.

Q. Now, the incinerator equipment referred
there is the equipment involved in the Smog
trol order or citation, criminal citation, isn't it?

A. It's the equipment specified in the contract
which Mr. Richman made with Air Pollution
trol, Inc., covering installation of certain
control equipment in the incinerators at the C
Cromwell and the Canterbury.

Q. On December 24, is it your recollection
the file was then given to you by Mr. Hallberg
taining to that subject matter of the inciner
and the smog control or the smog control con

sition of John Whyte.)

I took the files with me in my brief case
I left Mr. Hallberg's office at the Oliver
Cromwell.

Thereafter you read the file, did you——

I——

——and you noted the time you expended
in connection on your time sheets? I refer you
specifically to December 28, being your next time
sheet reading as follows: "Telephone calls from
Mr. Harrison re construction of incinerator
plant for Canterbury and [44] Oliver Crom-
well. Also re handling of petition for authority to
erect apartments." Is that correct, you did——

On December the 27th, the preceding day——

Well now, that is December 28th that I just
showed you. A. That is right.

Now, on December 27, the next notation here,
which seems to be out of order, but inadvertently,
sure, did you have something to do with that
particular matter of the contracts?

Yes. My time slip shows examination of files
with reference to installation of incinerator equip-
ment for Canterbury and Oliver Cromwell and lia-
son of receiver to carry out contracts for such
installation.

And you expended three-tenths of an

—— A. I did.

(Deposition of John Whyte.)

already the December 28th time sheet, is December 29. Would you read that time sheet?

A. Surely. "Taking petition for authority to renovate apartments to Judge Tolin's chambers. Telephone call to Harrison re court order re installing receiver to [45] permit plaintiff's appraisal to visit apartment houses and plaintiff's accountants to inspect 1953 books."

Q. Now, did you have a conference with Judge Tolin in chambers on December 29 concerning the subject matter of that petition?

A. I may have. I don't recall.

Q. You returned the Smog Control contract to Mr. Hallberg or Mrs. Hallberg or Mr. Harrison on the date shown in your transmittal letter which I believe, already referred to in the deposition?

A. Yes.

Q. Would you read your notes as to the services rendered on January 4th resulting in 1.9 hours being expended?

A. "Conference with Judge Tolin in chambers re contents of first report to be submitted by receiver, petition for authority to renovate, proper petition for authority to inventory assets and other matters. Telephone calls from Mrs. Hallberg re discussion of above items. Telephone call to Harrison re objections, if any, to inventory hereinabove mentioned. Telephone calls to Camusi and to right asking if they would agree not to require

osition of John Whyte.)

port of receiver. They both agreed it was unnecessary." [46]

Now, on January 15 you expended 3.4 hours. you read what services you rendered on that

"Telephone call from Lawrence Martin and from Camusi re matters to be considered at ng this afternoon on receiver's petition for ority to renovate apartments. Court appear-re hearing on said petition. Petition was grant-Conference with Hallberg in preparation for ng on said petition."

On January 19, 1953, you expended 1.1 hours rendering the following services: "Preparing report of receiver and petition for instruc-. Telephone call to Harrison re data to be ind in said report." Is that correct?

That's right.

On January 25—

In fact, if I may state for the record, Mr. ght, I think the allegations of the petition n I have filed as to the nature of the services rmed on the various days are substantially in rimity with the notations on the time slips, so

That I am aware of.

—I think this is unnecessary, but if you to build up a long record here I suppose that's

(Deposition of John Whyte.)

A. You already have noted in the deposition number of hours spent on each day.

Q. Will you answer this question: On Jan 25, 1953, you expended 5.6 hours in rendering following services:—

A. Shall I read them?

Q. Yes, if you will.

A. "Instructing and working with Harrison, Hallberg's bookkeeper, re preparation of schedules to be attached to receiver's first report. Dictating of receiver's first report and petition for instructions. Preparing notice of hearing on first report of receiver and petition for instructions."

Q. Now, what instructions did you give to Harrison on January 25 concerning Hallberg's bookkeeping or the books?

A. I instructed him with reference to the preparation of the schedules to be attached to the receiver's report.

Q. Do you recollect what you told him during that period of time?

A. If I may see a copy of your local District Court rules, I think perhaps it would refresh my recollection.

Q. Surely.

(The document was handed to the witness.)

Mr. Enright: Q. You might just tell us the section you instructed him concerning. [48]

A. I talked to him with reference to the rec-

osition of John Whyte.)

n that Mr. Hallberg's report should contain a summary of the operations of the receiver, an inventory of the assets, a schedule of all receipts and disbursements, and a list of all known creditors with names, addresses and amounts of claims, including taxes of all kinds, conditional sales contracts, and contingent claims known or which it is believed possibly exist.

Harrison asked me a great many questions about the preparation of schedules which would accurately reflect an inventory of the assets, a schedule of all receipts and disbursements, and a list of all known creditors with names, addresses and amounts of claims, et cetera.

You gave him a copy of the rule, didn't you?

No, I didn't give him a copy of the rules.

He took it down in shorthand when you read it to him, is that right, or do you know?

I don't know whether he took it down in shorthand or not. I know I explained the requirements of the rules to him, and he had a number of questions as to the mechanics of setting up the schedules, what should be shown thereon.

Now, directing your attention to January 27, did you read your notations on that day? [49]

"Telephone call from Harrison re problems involved in preparing receiver's first report. Also oral citation for alleged violation of smog regu-

(Deposition of John Whyte.)

knowledge or notice you had of a criminal citation on that subject matter, is that right?

A. It is.

Q. That's your time slip for January 27, isn't it?

A. That is correct.

Q. But it says '53. It means January 27, 1953.

A. It should be '54.

Q. Yes. You may change it now, if you want to, whatever you desire.

A. (Marking on document.)

Q. Then two days later, on January 29, 1954, you telephoned Mr. Richman, didn't you, in accordance with—or read the January 29 notation of services, will you, reflecting three hours expended?

A. "Telephone call from Harrison re criminal citation for violation of smog regulations. Dismissing ex parte order and affidavit extending time to file receiver's first report and petition for instructions. Telephone call from Mrs. Hallberg re criminal citation for violation of Smog Control Ordinances. Proceeding on Judge Tolin's signature on abovementioned criminal citation. Telephone call to Mr. Tow in office of Air Pollution Control District re citation for violation of Smog Control Ordinances. Telephone conversation with Judge Tolin re receiver's first report. Judge decided to modify Rule 18 (b) and postpone filing report until March 20, 1954, so that it might cover a full month." (Marking on document.)

position of John Whyte.)

ment. Conference with Hallberg re his first
t and other matters incident to receivership.
phone call to Camusi re delay in filing report.

May I see it?

Surely. I also recollect, although no mention
is made on the time slip, that I telephoned——

Mr. Richman?

——you or Mr. Richman or both of you.

At about 4:15 in the afternoon, Friday, Jan-
29, and left the message with Mr. Richman's
sary, isn't that right?

I think that's right. I couldn't find Mr. Rich-
n his office, and I didn't find you in your office.

Now, Mrs. Hallberg—— [51]

Incidentally, my telephone calls to you and
Richman were with regard to this criminal
on, because Mr. Richman was named as a de-
ant in the citation.

Yes, charged with a misdemeanor, isn't that
? A. Yes, it was a misdemeanor.

Yes. Now you have the notation here: "Tele-
e call from Mrs. Hallberg re efforts being made
dismiss criminal citation for violation of smog
ol order." A. "Ordinances."

"Ordinances." Thank you. And then imme-
ly following that, will you read the next phrase

I am having a little trouble with the first

(Deposition of John Whyte.)

and affidavit extending time to file the receipt report and petition for instructions.

Q. Now, going back to this portion of it relating to Mrs. Hallberg's efforts, did you have a conversation with her concerning her efforts to oppose the criminal citation for violation of the smog—

A. Apparently did from my notes.

Q. What was the conversation?

A. I don't recall.

Q. On February 1st you appeared in Department 30A of our Los Angeles Municipal Court.

A. "Re arraignment in City of Los Angeles versus Richman and McConnell."

Q. At that time I told you that I would appear in behalf of Mr. Richman and also offered to appear for Mrs. McConnell, didn't I?

A. I don't recall that you offered to appear for Mrs. McConnell. I know I was appearing on behalf of Mr. Hallberg's request since she was his agent at the time.

Q. After I had made a statement to the court, then you requested likewise that the matter be continued until February 23, is that right?

A. As I recall, we both requested that the matter be set over until February 23 at 9:30 a.m.

Q. Your request came after my request, didn't it?

sition of John Whyte.)

Yes. You expended 2.6 hours on that matter, you, on that day?

On that matter alone, of course not.

All right.

There are a number of other notations shown slip which I would like to read, if I may.

You have once read them into the record, I

I have not read them into the record.

Well, pardon me, you have not, so read the [53] of it then so we can——

“Conference with Mr. Tow of Air Pollu-

No, read the whole of it, “February 1st.” If re going to read a portion of it, please read hole.

Well, I have already read the first part. If like me to read it again, I will.

Yes, thank you.

“Appearance in Department 30A, Los An-Municipal Court re arraignment in City of angeles versus Richman and McConnell. Set until February 23 at 9:30 a.m. Conference with ow of Air Pollution Control re case. Tele-call to Harrison urging him to see that Oxy gets to work immediately on installation of control equipment. Telephone call from Mrs.

(Deposition of John Whyte.)

Q. Will you read your memorandum of the
ices rendered on February 2 resulting in 2.7 h
being expended?

A. "Telephone conversation with Harrison
tax returns to be filed by receiver. Examination
defendants moving papers re new trial. Telep
call to and call from Camusi re tax problems
necessity, if any, for moving for the appoint
of a permanent receiver. [54] Telephone ca
Harrison requesting names of known creditors
telephone conversation with Mrs. Hallberg re p
ems discussed with Camusi. Telephone call :
Mr. Hallberg re tax problems. Conference
Judge Tolin re appointment of Hallberg as pe
nent receiver and re associating tax counsel for
problems."

Q. Now on February 3rd you next rend
services on the Smog Control matter which rest
in the following memorandum being made, a
quote it: "Telephone call from Mrs. Hallber
tax problems, removal of—— A. Part.

Q. ——part of parapet from Canterbury
Smog Control problems. Conference with Mrs. I
berg re such problems——

A. ——as Smog Control, advisability of se
Western Arms and Fountain Manor, tax retu
et cetera."

Q. All right.

sition of John Whyte.)

Well, I am only inquiring about the Smog Control matter.

There is another notation here "Telephone conference with Town of Air Pollution Control reference with City Attorney and inability of Air Force to perform their contract at Canterbury. Telephone call to Oxy Air Force re their ability to in-equipment promptly—— [55]

Promptly.

——at Oliver Cromwell and Canterbury."

These are the only notations pertaining to the Control matters as of that day, February

A. I believe that is correct.

There was a total of 2.3 hours rendered, expenses or time expended that day?

On those and other matters.

On those and other matters. On February you had a telephone conversation with myself, Enright, concerning the Smog Control prob-

A. I did.

And on various other matters?

That's true.

And the total for your time of February 4th .1 hour?

That is true. That matter that you mentioned other matters were performed on that day as shown on the time slip.

You also dictated a letter, did you, to the

(Deposition of John Whyte.)

Q. Have you got that letter? I haven't that yet, Mr. Whyte?

A. I showed it to you on two occasions. It [56] my files and you may see it again if you like.

(The document was handed to Mr. Enright.)

Mr. Enright: Q. Thank you.

For the record, I will read the letter into it. It is addressed to Air Pollution Control District, South Santa Fe, Vernon, California. February 1954, attention Mr. Tow.

"Gentlemen:

"Following my telephone conversation with Mr. Tow yesterday afternoon regarding the installation of Oxy Aire——

Mr. Whyte: "By Oxy Aire."

Mr. Enright: ——by Oxy Aire of Smog Control equipment in incinerators located at the Oxy Cromwell apartment hotel, 418 South Normandie, Los Angeles, and the Canterbury apartment hotel, 1746 North Cherokee, Hollywood, I discussed this matter over the telephone with Mr. Manalis, one of the officers of Oxy Aire. Mr. Manalis informed me that his company had on hand sufficient material to install such incinerator equipment, including enough metal of a particular heat resistant type which is in a somewhat short supply throughout the country. Mr. Manalis further stated that his company would commence the work of installing

estimated that it would take from two to three to complete the installation. [57] I trust this information will be helpful to you.

Yours very truly,

John Whyte."

Whyte: "Attorney for Roy E. Hallberg, re- of the assets of the former Richman trust."

Enright: Q. Now, to summarize your serv- after February 4th, 1954, the services consisted of appearing up at the City Attorney's office, not, at a conference had between one of the Prosecutors, yourself, Mr. Hallberg, and my-

You are speaking now of my services only reference to the Smog Control problem?

Oh, yes, just the Smog Control problem.

And after which date did you mention?

After February 4th. That's the date of the there which we just read into the record.

No, they did not.

What else did you do?

On February 5th, I received a telephone call Mr. Camusi advising me that Mr. Richman been picked up on a bench warrant. I remem- questioned that. I told Mr. Camusi that he be in error, that the criminal matter had been ued for several weeks, but Camusi insisted hat information had been given to him by

(Deposition of John Whyte.)

phoned to Mr. Tow of Air Pollution Control District regarding that matter.

Q. Regarding what matter, the picking up of Mr. Richman, or what?

A. Yes, regarding whether or not the case—something had happened to the lawsuit that had been reactivated without my knowledge.

Q. I see. Did you call him from Mr. Richman being picked up, or you were representing the receiver then? Your problem was Mr. Richman picked up, wasn't it, not—

A. No. I was concerned—

Q. I see.

A. —for fear the action taken against Mr. Richman would lead to action being taken against Mr. Hallberg or his agents; that they might be picked up on a bench warrant.

Q. Well, will you proceed to explain what services you rendered concerning the Smog matter other than this telephone call from Mr. Camu-

A. If you will allow me to look at my statement I will tell you.

Q. Proceed, sir.

A. On February the 9th I attended a conference among Messrs. Tow, Enright, Hallberg, and myself in the office of Deputy City Attorney David [redacted] criminal complaint charging violation of Health and Safety Code on account of [59] smoke incinerator at Oliver Cromwell. Complaint was

sition of John Whyte.)

That's right.

Any other services on the Smog matter other than the telephone call from Camusi?

Any services subsequent now to February 9, 1953 to your question?

Yes, February 4th—I won't argue the point with you. The record will speak for itself.

Well, without having to go through each and every one of the rest of my time slips from February 9 to February 11, let me say that I don't recall of any further action in connection with the Smog Control problem subject to being corrected by the allegations in your petition.

Well, the fact is that on that day when we were in the City Prosecutor's office, Mr. Davis, the City Prosecutor, told you after you had signed a statement in his office that the complaint, criminal complaint, would be dismissed, isn't that right?

He did.

So that was the end of the matter, wasn't it?

I think it was, as I say. I may have advised Hallberg later with reference to performance on these contracts which Mr. Richman had entered into with Air Pollution Control District. I am not sure of it. [60] * * * * *

You commenced private practice, or partnership with Mr. Fitzpatrick about January 1st, 1953?

I went into partnership with Mr. Fitzpatrick

(Deposition of John Whyte.)

A. I was, for a period of almost exactly years.

Q. And before becoming associated with firm, what?

A. I was associated with the firm of Schul & Laybourne from approximately March, 1940 June or July of 1941.

Q. Have you now recited all of your associations since you commenced practicing law in fornia?

A. I have. [62]

* * * * *

[Endorsed]: May 7, 1954.

[Endorsed]: No. 14702. United States Court of Appeals for the Ninth Circuit. Frederick I. Richman, Appellant, vs. Lyda Tidwell, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and John Whyte, attorney for Receiver, Appellees. Lyda Tidwell, Appellant, vs. Frederick I. Richman, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and John Whyte, attorney for Receiver, Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: March 26, 1955.

/s/ PAUL P. O'BRIEN,

In the United States Court of Appeals
for the Ninth Circuit

No. 14702

A. TIDWELL, Etc.,

Plaintiff and Appellant,

vs.

DERRICK I. RICHMAN, Etc., et al.,

Defendants and Appellants.

E. HALLBERG,

Receiver.

STATEMENT OF POINTS

The Trial Court erred in assuming it had power or jurisdiction to adjudicate the plaintiff's defendant's pro-rata rights to the balance of funds in the possession of the receiver upon settlement of the receiver's accounting.

If the Trial Court did have power or jurisdiction to determine the plaintiff's and defendant's pro-rata rights to the balance of the funds in the possession of the receiver upon settling his account, the court committed error in the following particulars:

By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$785.00 which was under the control of the receiver, which the plaintiff's agents took possession of and re-

;

agents which were required by the order of Court to be collected by the receiver;

(C) By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$2027.27, being a sum of money paid by the receiver on account of an obligation assumed and required to be paid by the plaintiff in accordance with the settlement agreement made by plaintiff and defendant terminating the receivership and settling the dispute;

(D) By granting the plaintiff a credit in the amount of \$2476.38, being one-half the real property taxes which were paid by the plaintiff, when pro-rating the balance of the funds remaining in the possession of the receiver between the plaintiff and defendant;

(E) By granting the plaintiff a credit in the amount of \$1300.00, being one-half the cost of catalytic units paid for by plaintiff, when pro-rating the balance of the funds remaining in the possession of the receiver between the plaintiff and the defendant.

3. The Court erred in awarding the receiver Roy E. Hallberg, a fee for his services as receiver in the amount of \$6,000.00 for the following reasons:

(A) The receiver misrepresented his qualifications and experience to the Court and thereby obtained his appointment;

ed by the receiver in this case, and concealed
e had accepted full-time employment from an
y of the County of Orange, State of Cali-
, at a monthly salary of \$350.00;

The receiver concealed that he would and
delegate his executive duties to others; and,

The receiver failed and neglected to per-
the duties of a receiver and performed duties
negligent and careless manner;

The Trial Judge abused his discretion by re-
, upon petition, to disqualify himself to hear
counting of the receiver and his petition for

The Court erred in awarding the attorney for
ceiver fees in the amount of \$1800.00, in that
fees are excessive and unreasonable.

ed this 29th day of March, 1955.

BRADY, NOSSAMAN & PAULSTON

and

JOSEPH T. ENRIGHT,

By JOSEPH T. ENRIGHT,

Attorneys for Defendants and

Appellants

davit of Service by Mail attached.

ndorsed]: Filed March 30, 1955. Paul P.

en, Clerk.

STATEMENT OF POINTS

1. The trial court correctly assumed jurisdiction to adjudicate plaintiffs' and defendant, Fred I. Richman's rights, respectively, to the balance of funds remaining in the hands of the receiver after the payment of all bills and costs of the receivership, including the receiver's fee and the fee of his attorney.

2. As to the Points raised on appeal by defendant Richman with respect to the division between plaintiff and defendant Richman of said balance remaining in the hands of the receiver, the trial court did not commit error:

(A) In failing to charge plaintiff's interest in the balance of the funds in the amount of \$785.00 which \$785.00 consisted of a petty cash fund which was part of the assets purchased by plaintiff and defendant Richman.

(B) In failing to charge plaintiff's interest in the balance of the funds in the amount of \$1,290.50 for any other amounts, as rents collected by plaintiff's agents.

C. In failing to charge plaintiff's interest in the balance of the funds in the amount of \$2,027.27 in making a mortgage payment made by the receiver on or about February 28, 1954. (As a matter of fact plaintiff's interest was charged with one-half

In granting plaintiff a credit for one-half of all property taxes which were paid by plaintiff out of her own separate funds, which taxes covered the last two month period during which plaintiff and defendant were joint owners of the property.

In granting plaintiff credit in the amount of \$100.00, being one-half the cost of catalytic units which plaintiff paid out of her own separate funds. That if any mistakes were made in computation by defendant Richman waived the same by failing to object in the trial court.

As to the points raised on appeal by plaintiff Lyda Tidwell with respect to the division between plaintiff and defendant of said balance remaining in the hands of the receiver, the trial court committed error.

In granting defendant Richman a credit of one-half the agent's fee for the month of November, 1934, the last month in which he acted as agent of Richman Trust, prior to the court terminating the trust and appointing the receiver to operate the properties pending a final determination of the same;

In failing to credit plaintiff's interest in the sum of \$906.50, consisting of seller's escrow fees in the amount of \$329.00 and revenue stamps in the amount of \$577.50, which were defendant's rightful expenses as seller in connection with the sale of all

the order finding the receiver's account to be and correct, and fixing the fees of the receiver and his attorney, but plaintiff does appeal from the order insofar as it charges plaintiff one-half the sum of \$89.20 paid by the receiver for copies of depositions, since said depositions were taken in connection with defendant's objections to the accounting of the receiver. (Plaintiff did not object to the fixing of reasonable fees for the receiver and his attorney, nor has plaintiff appealed from any other portion of the order.

6. The trial court did not abuse its discretion in refusing to disqualify itself in hearing the accounting of the receiver and petition for fees.

Dated this 12th day of April, 1955.

MARTIN, HAHN & CAMUZZI
/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff and
Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 13, 1955. Paul J. O'Brien, Clerk.

In the
United States Court of Appeals
For the Ninth Circuit

ERICK I. RICHMAN,

Appellant,

vs.

TIDWELL, ROY E. HALLBERG, as Receiver of all
real and personal property constituting the former
Richman Trust, and JOHN WHYTE, attorney for Receiver,

Appellees.

TIDWELL,

Appellant,

vs.

ERICK I. RICHMAN, ROY E. HALLBERG, as Re-
ceiver of all the real and personal property constituting
former Richman Trust, and JOHN WHYTE, attorney
Receiver,

Appellees.

Opening Brief Appellant
Frederick I. Richman

BRADY, NOSSAMAN and WALKER
and

JOSEPH T. ENRIGHT

541 South Spring Street

Los Angeles, California

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In the
United States Court of Appeals
For the Ninth Circuit

RICK I. RICHMAN,

Appellant,

vs.

TIDWELL, ROY E. HALLBERG, as Receiver of all
real and personal property constituting the former
Richman Trust, and JOHN WHYTE, attorney for Receiver,

Appellees.

TIDWELL,

Appellant,

vs.

RICK I. RICHMAN, ROY E. HALLBERG, as Re-
ceiver of all the real and personal property constituting
former Richman Trust, and JOHN WHYTE, attorney
for Receiver,

Appellees.

No. 14702

Opening Brief Appellant
Frederick I. Richman

JURISDICTION

The Trial Court acquired jurisdiction under 28
U.S.C. 1332 (a) (1) in that Appellant Lyda Tidwell as
Plaintiff alleged in her Complaint her residence as
being in the State of New Mexico and Defendant—Appel-
lant—Frederick I. Richman and the other Defendants' re-
sidence being the State of California. These allega-

and the appointment of a Receiver. A receiver appointed before judgment was entered upon the issue of undue influence. Thereafter Appellants Richman and Tidwell settled their differences. This appeal arises out of the Trial Court's judgment in the ancillary receivership proceeding settling the Receiver's account, fixing fees and distributing the moneys then in the possession or under the control of the Receiver between the Appellants Richman and Tidwell. The jurisdiction of this Court rests upon Section 1291 of the Judicial Code as Amended (28 USC 1291).

PRELIMINARY STATEMENT OF CASE

On November 30, 1953, the Trial Judge directed the attorneys for the parties to appear at his Chamber and delivered to them his Memorandum Decision on that date. (R. 2). The decision determined that Appellant Frederick I. Richman who had for approximately twenty-five years practiced law in Los Angeles and had engaged in many business enterprises, was constructively guilty of unduly influencing his sister Appellant Tidwell, at the time they executed the trust. The Trial Judge advised counsel he was forthwith appointing a Receiver. On December 2, 1953, the Receiver, Roy E. Hallberg, qualified as the Receiver. On February 26, 1954, the Trial Court, pursuant to the Stipulation of the parties based upon their Settlement Agreement of the previous day, made an Order relieving the Receiver of his active duties, as of 5 p.m.

Receiver to account. (R. 56). On March 18, 1954, Receiver filed his Report and Petition for allowance of a reasonable fee (R. 75), and his attorney also petitioned for allowance of a fee of \$3,000, plus an extraordinary fee. (R. 58). On April 6, 1954, Appellant Richman filed an Answer and Objections to these petitions (R. 125). On April 7, 1954, Appellant Tidwell filed her objections to the Receiver's account and petition. (R. 145). On April 12, 1954, Appellant Tidwell (hereinafter referred to as Tidwell), filed a Reply (R. 152), to Appellant Richman's Objections. (R. 152). The Appellants Richman's and Tidwell's issue involves the right of the Trial Court to adjudicate a dispute as to the interpretation of their Settlement Agreement of February 25, 1954, except to the extent that it may involve the moneys remaining in the possession of the Receiver after payment of expenses to be deposited with the Trial Court when discharging the Receiver.

The Accounting and Petitions of the Receiver and the Attorney, the Objections of the Appellants and the Reply of Tidwell constitute the pleadings and the matters in dispute in which the following general statement of the issues are raised. The questions involve the Trial Court's:

1. Determination of the amount of moneys in the possession of or under the control of the Receiver, and directing that specific amounts for certain specified items involved in the Settlement

B. Awarding fees in the amount of \$6,000 to the Receiver and \$1800 to his attorney.

Richman shall, since he charges a gross abuse of judicial discretion, attempt to concisely abstract this luminous record, (the nature of the proceedings considered).

I.

STATEMENT RE: SETTLEMENT—ACCOUNT —DISTRIBUTION OF FUNDS—RESULTING GROSS ABUSE OF JUDICIAL DISCRETION

Appellants' settlement of their differences after appointment of the Receiver, is evidenced by two letters dated February 19th and 25th, 1954, being Exhibit H (R. 807), appearing verbatim (R. 139-144). The plan of the settlement was an offer of Richman:

- A. To buy or sell his interest in the Trust for \$600,000; and
- B. The Receiver to retain all money in the Trust and under his control at the end of February 1954, pay the Receiver's and Trust expenses shown on his accounting; the balance to be divided equally.

Tidwell elected to buy, by her letter acceptance (R. 143). As required by the letter agreement, an escrow was opened, being Exhibit E, (R. 798). The Escrow Instructions (R. 800) provided):

after the printed form specifically provided:

"Prorate taxes, including all items appearing on tax bill, except taxes on personal property not conveyed through this escrow to _____, based on latest tax statement in your possession."

Appellant Tidwell and her attorney signed these Instructions and there was inserted the word "None" in blank space. Likewise the form stated:

"Prorate rentals on basis of statements approved by me to _____, but make no adjustment on uncollected rentals."

There was inserted the word "None". The Seller's Instructions were signed by Appellant Richman and they contained the following words, which were inserted in blank space:

"Notwithstanding any of the printed provisions herein I, the undersigned, Frederick I. Richman, am not to be at any expense under this Escrow." (R. 800).

On February 26, 1954, the attorneys for the Appellants submitted a written Stipulation received in evidence at trial as Exhibit C (R. 798), which appears verbatim as follows: "1954. Insofar as material to the facts here stated, provided:

"That the Receiver, Roy E. Hallberg, be relieved of the possession, control and management of the assets of the said Richman Trust, excepting funds

at the pretrial as Exhibit D (R. 798), which appears verbatim at R. 55. It provided that the Receiver

“Shall be relieved of his active duties of management, control and possession of the assets known as Richman Trust as of 5:00 o'clock p.m. Sunday, February 28, 1954, and that the said Receiver Roy E. Hallberg, his agents and employees and all other agents, servants and employees of the said Richman Trust give over control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, excepting money in bank accounts under the control of the said Receiver but including all other said assets of the Richman Trust such as the following apartment houses and their contents.”

Thence the five Los Angeles apartment houses by which they were specified. At a pretrial there was received in evidence Exhibit A (R. 796) a Mutual Release, Exhibit B (R. 797) a Dismissal, appearing verbatim on the record at R. 124, to which the Trial Court alluded in ordering the Dismissal filed:

“It is so ordered except that jurisdiction be retained over all moneys, credits and assets in bank accounts or under control of Roy E. Hallberg, Receiver, heretofore appointed here and over the said Receiver, and to fix his compensation and his expenses, including fee for his attorney. Monday, February 22, 1954—Ernest A. Tolin, Judge.”

At the same pretrial hearing Exhibit F, a letter agreement with Air Pollution Control, Inc., dated October

'A deposit of 10% of the above quoted amount is required upon execution of Contract, the balance of which is payable upon receipt of the Los Angeles County Air Pollution Control District Permit to Operate.'" (R. 802).

smog control units were installed in two of the apartment houses as shown by Exhibit G, the Permits to operate them (R. 805). The Permit for the apartment house at 418 South Normandy was issued March 15, 1954, and for the apartment house at 1746 North Wilshire Avenue, on June 2, 1954 (R. 805).

Other facts involved in the Order distributing funds are as follows:

Paragraph Four of the Settlement Agreement (R. 805) required the parties to stipulate to an Order and the Court did make an Order terminating the Receiver's active powers as of 5:00 p.m. Sunday, February 28th, "excepting money in bank and under the control of the said receiver" The records show the Receiver's performance concerning these matters, as follows:

1. *A petty cash fund in the possession of the managers of the five apartment houses.*

The Receiver testified (R. 420), that the managers were his agents; that a petty cash fund in the amount of \$785.00 was under his control.

Q. You did not take possession of that

A. That is correct. For one reason. The reason being that that was a part of their work on the properties of the building.

Q. So far as you know, Mr. Hallberg, Plaintiff, Lyda Tidwell, or her Agent, Mr. U or someone of her agents, still have that \$785.00 is that right?

A. So far as I know, Yes, they have. It represents \$785.00, either cash or receipts."

B. *Rentals Collected Before 5:00 P. M. on February 28, 1954.*

In addition, the Receiver failed to collect the rents for the three days February 26th, 27th, and 28th, 1954. He testified (R. 418):

"Q. Did your attorney also inform you that you were to only retain the money in the building and under your control?

A. I believe he did. (R. 419)

Q. You have already testified concerning the \$2,000 figure shown on page 12 of the Petition, that is, the receipts for the days of February 27 and 28, 1954?

A. That was an approximate, it was an estimate, it isn't factual.

Q. Well, it was your best judgment when you verified the Petition?

A. That is correct.

Q. And based upon your acting as Receiver in this matter, have you made an audit since then to ascertain the amount or done anything?

A. No.”

Investigation was made by Appellant Richman to obtain the amount. He testified (R. 683), that the amount of rents collected on February 26, 27 and 28, was \$1290.59. The managers of the apartment houses collected this amount at 5:00 p. m. on February 28th and then paid it to Appellant Tidwell.

On the April 12, 1954, Minutes of the Court (R. 157)

:

“It is ordered that the issues of payment to receiver and his attorney is set for trial May 11, 1954, 9:30 a.m., and it is further ordered that issue of balance of remaining moneys by the Receiver after payment of his fees and his attorney’s, is set for pretrial hearing May 14, 1954 10:00 a. m.”

Pretrial fixing the fees was had from time to time on May 12, 13, 14, 17, June 7, 8, and 18, 1954. On June 18 the Court inquired (R. 774):

“Can you go forward with the pretrial matter of the Tidwell v. Richman phase of this case on Monday afternoon?”

“Mr. Camusi: Yes, that is wonderful. I was going to ask if I could be excused at 11:00. I have another matter I just can’t put over.

“The Court: We will continue this phase of this hearing until Monday afternoon.”

Pretrial was had on June 21, 1954 (R. 782-817), at

1953, in the amount of \$3,104.13 had not been paid. The Court then stated (R. 809), that it appeared issues of fact remain which would require trial unless the parties could stipulate. Appellant Richman offered to forfeit a smog equipment item of \$58.80 rather than go to trial, leaving only a then believed issue of proration of rents (R. 810). Thereupon argument in support of Appellant Richman's objection to the receipt of parol testimony concerning prorations to vary the terms of the written Settlement Agreement and Escrow Instructions was made. The Court ruled:

“The Court: The Court sustains your objection. I think parol evidence takes care of it. Parol evidence rule, I mean.” (R. 812)

Thence the Court set aside the ruling (R. 813), and the pretrial was adjourned.

The next proceeding occurred September 27, 1953, at which the Court opened by stating (R. 817):

“It has been a long time since we were all here in this case, but, as I recall it, this is the day for the final, final argument on the subject of settlement of the Trustee's account or, rather, the Receiver's account.”

Again Appellant Richman's objection to the receipt of parol evidence upon the question of proration upon the ground that such evidence would vary the terms of the written Settlement Agreement, were made (R. 828), with the closing statement:

the Appellant Tidwell's argument in support of her claims for escrow expenses and as proration it was asserted (R. 835-837):

"As to the proration of the rents, I think these managers' reports for the five apartment houses will show when the rent was due, and when it was paid, so that in that sense it can be seen that during the month of February certain rents were collected which were properly for the month of March. And I would like to offer those into evidence, together with these utility bills.

"I noticed in the transcript that Mr. Enright said we might introduce the utility bills into evidence, and I offer those exhibits at this time.

"Mr. Enright: To which objection is made upon the grounds heretofore argued, and heretofore stated, and if such documents are received in evidence, of necessity there will be created an issue as follows:

"Concerning the real-property taxes, which are claimed to be some \$4,000.00, if proration is to occur, of necessity there will have to be proration of the personal-property tax claims paid by Mr. Richman on personal property on a much larger sum.

"Second, as to the rents received by the managers before March 1st, which under the court order were to go to the Receiver, and which in fact were picked up by Mr. James Udall, there is no dispute in the evidence concerning those, in the

prorate both ways to be equitable and fair.

“Thirdly, if we are to prorate utility bills on these bills here, this bundle of bills show errors in mathematics.

“Fourthly, it shows right upon its face that they are attempting to charge Mr. Richman with long-distance phone calls, and similar charges.

“Also, I submit that the tenants pay when they get their bill for their month’s rent, and they would have paid in March.

“And there are a lot of details of question of fact, and if we are going to entertain some implied covenant to prorate, or some implied custom to prorate, when we have this express contract, I submit that if we try the matter we will take at least a number of days to hear it.

“The Court: Sustained. Just a moment.
(Another case called.)

“The Court: Proceed.

“Mr. Camusi: I don’t know what that ruling means. If it means your Honor does not wish to take evidence at this time, and you are going to decide an accounting should be had, that is perfectly agreeable to us, but I hope it does not mean your Honor has ruled before I shall have made my argument as to what the law is on this issue in the case.

“The Court: If on the main contention I should ultimately decide you are right, we will refer the whole question to a Master for the taking of evidence.

“Mr. Camusi: I see.

the approximate amount of taxes for the period January 1st to February 28th, were ascertained during the June 21st pretrial, no utility bills were marked for identification and no evidence was received to support these claims. The Court, upon this state of the trial record stated: (R. 842)

"I will take it under submission and give you my decision rather quickly."

On October 5, 1954, the Court issued a Memorandum to Counsel re disposition of funds under control of Plaintiff and allowance of fees (R. 182-188). Appellant Plaintiff's claim for his fees as agent of the terminated Trust, in the amount of \$3,104.33, being a certain 10% as fixed by the Trust Agreement, was reduced to \$300.00. Concerning escrow expenses the Court stated (R. 183):

"Plaintiff has stipulated in the Escrow Instructions that all of the seller's costs and expenses of escrow, revenue stamps and recording be at her expense. She cannot now avoid that written understanding by claiming inferences from an agreement that do not clearly flow from that written agreement."

In (R. 186) concerning the same Escrow Instructions which provided no proration the Court stated:

"The Court finds that real property taxes were a continuing obligation of the Trust, whereas Mrs.

ing date had not arrived, it is proper that she be reimbursed for what she has paid out of her own funds in payment of operating expenses which had arisen before she acquired her fee simple title and assumed by express agreement the operating expenses as of a date after the same period of question."

Likewise (R. 184) the Court directed the utility bill in the amount of \$1877.50 (there being no evidence to support the amount even at pretrial), to be paid out of the funds in the possession of the receiver; determined that cash in the hands of the Managers, Receiver's Agents, representing the rents for February 27 and 28, were a part of the assets being purchased by Appellant Tidwell; determined (R. 185) that street units contracted for before the Receivership partially or entirely installed during the receivership, on which payment was to be made upon issuance of Permit, were to be paid out of the funds. Likewise, the \$785.00 cash fund (R. 185) in the possession of the managers, being agents of the receiver, were assets of the Trust to be retained by Appellant Tidwell. The facts as to the fees ordered paid will be considered hereafter. On November 19, 1954, the Court signed its Order (R. 186) carrying its decision into effect. Appellant Richmond has appealed from this Order. (R. 196)

II.

TRIAL COURT'S JURISDICTION RE APPELLANTS' SETTLEMENT AFTER RECEIVERSHIP

ed (R. 137) that the Receiver by virtue of the Order of February 26, 1954, was required to act to 5:00 o'clock P. M. February 28, 1954. The assets remaining in the possession of the Receiver subject to the directions of the Appellants -

“ . . . and, in the event they (Appellants) cannot agree upon their distribution then each is entitled to apply to a court of competent jurisdiction to initially and originally determine their respective rights.” (R. 138)

Appellant Tidwell filed a Memorandum with the Court contending that the Trial Court had the power to dispose of the remainder of the funds under the control of the Receiver. (R. 154). On April 12, 1954, the Court, when setting the hearing upon the accountants' report, also set the question of distribution of the funds for another date. At that time (R. 245), for the first time it was again stated:

“Your Honor, I again point out that this Court does not have jurisdiction of a Contract made by Lydia Tidwell and Frederick Richman on February 25th, 1953.

“Mr. Camusi: Let's argue that at the pretrial.

“The Court: That would appear *prima facie* to be so.”

During the trial upon the Receiver's accounting Appellant Richman again pointed out that the Trial

the rents for February 26th to 5:00 o'clock P. M. February 28, 1954, in the amount of \$1290.59, which were admittedly obtained and were in the possession of Appellant Tidwell, and further find that the Receiver had on February 27, 1954, made a payment for the benefit of Appellant Tidwell in the amount of \$203.00 contrary to the Court's Order of February 26, 1954 (R. 685-686).

III.

STATEMENT RE FEES—CONDUCT RESULTING IN GROSS ABUSE OF JUDICIAL DISCRETION

A. Representations—Receiver's Ability, Experience, Availability.

On November 30, 1953, the Trial Judge rendered its decision upon the merits in the main action upon the issue of fraud or undue influence in the inception of the *intervivos* trust. (R. 220). It determined that the Trust should be terminated because of statutory undue influence. The attorneys for the parties were called to the Court's Chambers, the decision delivered and the Court announced its intention to appoint Roy E. Hallberg Receiver. It stated:

“Mr. Hallberg was for some years associated with a property management operation in Chicago, and has considerable acquaintance and experience in that type of work. Since coming to California he has held various positions with different types of corporations and has been engaged

"I called him and found that he is available, and I asked him to come in here at about 2:00 'clock today so that counsel could meet him." (R. 205)

The Court continued:

"I have known Mr. Hallberg in a rather off-and way for some time, but he is not a particular friend or even a close acquaintance, although his name has come up in connection with the consideration of other names." (R. 206)

Mr. Hallberg was called to the Chambers of the Court, and the Court stated:

"The Court: Just have a chair, Mr. Hallberg. The court has now given its decision in the matter, which I discussed with you last week, and I have asked counsel if there is any objection—of course, the defendant feels no doubt that he should have been on the case, but since a receiver is to be appointed—whether they have any objection to you as the selection of the court as receiver.

"Now, they haven't announced any objection, but they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience in it locally has been in the management of your own real properties, which were of income nature and of similar properties

“The Court: Now, if counsel wish to question Mr. Hallberg before the appointment is actually made, the clerk will swear him, and you may ask any questions you wish.

“Mr. Enright: On behalf of the defendant, your Honor, I am in no position at this time to interrogate this gentleman. I am satisfied that your Honor would not have selected anyone except a man of not only integrity, but of ability. But my objection goes to the proposition of the appointment, your Honor, and I will seek, and now have time to consider what steps are required under the procedural requirements of this court to block against his appointment at this very day, or as soon as I assume the order can be drawn. I see, your Honor, my basic position is that I do not represent a member of the bar, and I do not represent a person who, I submit, under all the evidence ever taken one red cent from this trust, from the date of its execution and for years before in the operation of this joint venture.” (R. 209-211)

The Court stated:

“The Court: I think it is not appropriate for the defendant to remain longer in control as trustee, for several reasons which do not reflect upon whether or not he has been taking money from the trust. I don't understand that there is any charge that he has ever stolen anything. Of course, this is an action for an accounting based upon various grounds, which we need not enumerate here, with

concerning the proposed Receiver's place of business was stated by the Court:

"I am going to suggest to Mr. Hallberg, who I think has a place of business somewhere around San Gabriel or San Marino, or South Pasadena,—

"Mr. Hallberg. It is in Pasadena.

"The Court: And you live at Corona del Mar?

"Mr. Hallberg: That is correct." (R. 215)

Richman's objections to the Receiver's Account and Motion (R. 125), and a Petition to Disqualify the Trial Judge (R. 158), raised an issue as to the experience and ability of the Receiver and the unclean hands of the Receiver, arising out of these representations. On November 1, 1953, Richman requested that the amount of the Receiver's bond to stay appointment of the receiver be reduced (R. 216). The Court was advised that the Receiver had, without qualifying, taken over a bank account and was demanding and collecting rents collected by the managers be turned over to him, and the Trial Judge stated to Richman's counsel:

"The Court: Mr. Wyatt, I think perhaps the concern isn't quite as imminent as you have been led to believe. The receiver hasn't brought up the bond." (R. 216).

"The Court: The bond will have to be approved by the court and he isn't entitled to take

The Minutes for December 2, 1953, (R. 30), show that the bond was presented and approved on that day. Richman's Motion to fix supersedeas bond was on the same day continued until December 3rd. On December 4, 1953, the Court's Minutes show that it refused to fix supersedeas bond. (R. 32). The Receiver's attorney's testimony disclosed the following concerning the Receiver obtaining his bond:

"Q. (By Mr. Enright): Please read your time slip of December 2 about getting qualified. (3)

"A. I will be glad to. The time slip for December 2—this is Mr. Fitzpatrick's time slip. 'Hallberg came in at 9:00 a.m. re his bond as receiver. I telephoned Hecht at F & D. He said that he had been asked last night by Richman to put up a supersedeas bond on appeal. That if a writ of supersedeas were issued we might not be able to collect the premium on our bonds out of the assets of the receivership.

'He therefore wanted to wait until the issuance of the bond, to see if a supersedeas were issued. He reported this to Mr. Hallberg. We agreed to wait one hour.

'After a while Hallberg suggested that he go to Judge Tolin's secretary. He called her, but Judge Tolin, who said to get the bond in right away and he would see that the premium was paid out of the receivership assets.

'I phoned Hecht and told him that if he were able to issue the bond we would get it elsewhere.

‘He called back in a few minutes and said he would issue the bond. I gave him the title of the court and cause, and Hallberg went over to his office to get the bond. Whyte came in and I reported to him what had happened.’ ” (R. 555-556).

On January 15th, a Petition of the Receiver for authority to expend moneys in renovating, etc., the apartment houses, came on for hearing, and for Richman was stated (R. 231):

“One of our problems is that we have no knowledge of Mr. Hallberg’s experience in the particular field, other than what your Honor told us the day he was appointed. We would appreciate Mr. Hallberg going over his problems, if he will, to some degree with Mr. Richman from time to time, if that meets with the approval of the parties, because that is the only means we can have.

“May I say, second-guessing Mr. Hallberg’s judgment in shifting sinks in the Western Arms Apartments, which our answer shows is rapidly becoming a changed district, . . . (R. 231).

The Court had explained the then cooperative circumstances in the following words:

“I understand, by being cooperative with the Receiver, nothing has been waived, and I appreciate the fact Mr. Hallberg, on occasions when he has seen me, has told me of very nice cooperation that Mr. Richman has given him in regard to mat-

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the Receiver had made for information and given positive cooperation on a voluntary, useful basis.” (R. 221)

The Court’s Memorandum Decision of October 1954, stated (R. 187):

“Mr. Richman, with whom he had to deal a person given to hostile and aggressive attitude. It is evident that he exercised these in his relations with the Receiver.”

Richman could not contact the Receiver after December 18, 1953. (R. 537-538).

B. Petition To Disqualify.

The Settlement Agreement of the Appellants, the Stipulation relieving the Receiver from active duty except his retaining the money in the bank and under his control, occurred in February, and by April 1954 issues had been joined by the Accounting, Petition for Fees, and Objections. The Minutes of April 12th, 1954 (R. 157), record the following:

“The Court makes a statement that no evidence will be taken concerning the appointment of the Receiver in this action”

and the accounting was set for hearing on May 1954. On April 30, 1954, Appellant Richman filed a Petition with the Court requesting that the Trial Judge disqualify himself from hearing the Accounting Petition for Fees, upon the ground the Trial Judge

; (R. 158); that the Trial Judge would be required to testify concerning these allegations. The Judge did not act upon the Petition. The issue of the Receiver's unclean hands, arising out of his representations, resulted in the Court ruling and granting:

“You can't call the Court on that subject. We are not going into it any further. It is closed.” (R. 456).

Under these circumstances Appellant developed the facts involved in the issue of the representations made by the Receiver. (R. 417-461).

Receiver's Availability and Earnings.

Concerning Receiver Hallberg's availability to act as Receiver and manage the five apartment houses, being the principal assets of the Trust, the record reveals the following: Before December 1, 1953, he had taken an examination to be an employee of the County of Orange (R. 326). He was advised on Wednesday, December 2nd, or Thursday, December 3rd, 1953, that he was to commence work on December 7, 1953 (R. 357), as a permanent employee (R. 356), at a salary of \$355.00 per month (R. 328). The record is replete (R. 326-342, 71-922 (Deposition of Hallberg)), with the effort to ascertain Mr. Hallberg's County of Orange hours of employment, previous experience, and previous compensation as bearing upon a reasonable fee for this re-

hours a day on a five-day week for the County of Orange. The Receiver (R. 361) did not advise the County of Orange he was appointed a Receiver by the General Court. He stated he had some other commitment. He did not advise the Trial Judge (R. 363) of his contemplated County of Orange employment when he took his oath on Wednesday, December 2nd. He told one he was going to be employed by the County of Orange because he intended to delegate his receivership duties to his "Secretary", Miss Cosgrove, maiden name of his wife (R. 380). He introduced Miss Cosgrove by the name "Miss Cosgrove" to Mr. Lipphardt, manager of one of the apartment houses as his "right hand", stating that Miss Cosgrove would supervise the building. (R. 504). Another manager, Maude Kennedy, saw the Receiver on three different occasions during the receivership. (R. 469, 476, 480). Miss Cosgrove testified (R. 526) that she phoned the Receiver at the Orange County Assessor's office where a problem arose concerning the breakdown of the refrigeration in one of the apartment houses.

"Q. Had you ever told Mr. Harrison (a bookkeeper of the Receiver), or anyone else that could reach Mr. Hallberg in Mr. Byram's office (County of Orange)?

"A. I had not.

"Q. So far as you know no one knew that Mr. Hallberg could be reached at Byram's office

"A. That I am not sure of; possible."

Witness Barney Manalis (later referred to again) (R. 702), that he tried to contact the Receiver a few times but never successfully. Richman testified that he was never able to contact the Receiver. (R. 19). On December 18, 1953, the Receiver was contacted from the County of Los Angeles and his attorney verified a Petition for an Order authorizing pay-off of Christmas bonuses to the managers of the five apartment houses and other employees. (R. 34). The Receiver testified that during the period September through October, 1953, he was employed by Narmco Corp., a steel pole manufacturer, at a salary of \$350 a month. (R. 364). That from May to December, 1951, he had made an investment of \$18,000 in Morrell Construction Company, a corporation, he had a salary drawing account of \$100.00. (R. 365). That he came to California in 1947, for the Refrigeration Corporation, but it "got into financial trouble" and he had trouble with his back, "so my employment is a little confusing from that point on, . . ." (R. 375). On May 29, 1947, he purchased a lot at 85 Glen Summer Road and built a house on it, then another lot at 90 Glen Summer Road and a house on it; and the last house on June 17, 1952 (R. 367). He lived there until about 1952. The Trial Judge lived on the same block on Glen Summer Road at the same time (R. 430). He testified that from 1932 to 1947 he

\$40,000 a year (R. 368). He quit this employment to come to California. During the period December, 1949 to November, 1950, he owned a 16 unit apartment house at 1509 Fair Oaks, Pasadena. The only experience he had with properties in Los Angeles County was the Glen Summer Road houses, a four-unit flat, one finished, at 507 El Molino Street, Pasadena, and the 16 unit apartment house. (R. 370). The only business dress he had was Morgan Construction Tooth Comp (May to December, 1951), except that he explained in answer to the Trial Court on November 30, 1953, concerning a business address in Pasadena, that he received mail at the flat. This flat was rented at that time (R. 377). That before being employed by Gregett Company in 1932 he had been employed for about one year by a bondholder of certain bonds secured by Chicago income property, issued by a Chicago bank. One Chicago hotel was similar to the Richman apartments. (R. 381). Mrs. Hallberg explained her experience (R. 515-527), that she had graduated from the University of Minnesota; that in approximately 1935 she attended evening classes two or three times a week at the Traphagen School of Design in New York City when she was employed by Investment Counselors Johnston & Longquist; she met and married Mr. Hallberg in 1940, decorated their New York home, decorated Glen Summer Road residences and was a housewife until the receivership.

The Receiver Hallberg testified:

after your appointment, and I assume December and as your date of appointment,—we had better go back to December 1st—that was the day, I think you went around to some of the apartment houses. During the first three days, did you introduce anyone to the managers as being your agent?

“A. Yes.

“Q. What did you tell the managers?

“A. I introduced Miss Cosgrove.

“Q. What did you tell the managers?

“A. I told them she was going to act for me.

“Q. In the—

“A. In the management, yes. And anything she wanted (206) would be under my instructions, and they were to follow it.

“Q. You did not later inform the managers that Miss Cosgrove was your wife, did you?

“A. I didn't see it was necessary, for the simple reason that she preferred acting as Miss Cosgrove.

“Q. You did not inform Judge Tolin you intended to delegate your operation of these five apartment houses to your wife, did you?

“A. I did not inform him that I was going to hire any assistance, or, in fact, we had no con-

“A. If it required it.

“Q. You did, in fact, perform your activities as the Receiver by receiving reports from Miss Cosgrove?

“Mr. Whyte: Oh, objected to as going far beyond the evidence adduced here. The witness testified as to what he did. His own personal activities, as to a Receiver, went far beyond receiving reports from Miss Cosgrove or Mrs. Hallberg. It assumes facts completely contrary to the facts.

“The Court: Overruled.

“Q. (By Mr. Enright): You did, in fact, Hallberg, especially—or, commencing December 7, 1953, rely upon Miss (207) Cosgrove in performing activities involved in the management of the five apartment houses?

“A. I didn't hear everything you said the

“Mr. Enright: Read the question.

(The question was read.)

“The Witness: I relied on some of her activity, that is true.

“Q. (By Mr. Enright): Actually, the physical method of operation was that commencing December 7th and all through February 28th, and would make trips up to Los Angeles on the weekends or come up Friday night after completing your work for the County of Orange, isn't it right?

“A. I came up during the week. I came up Friday, it is true. I was there Saturday. I was even there on Sunday.” (R. 433-434).

The Receiver's direct testimony more clearly describes how he performed his duties in managing five apartment houses of over 400 units, being substantially the assets of the Richman trust.

. Receiver's Services.

The Receiver testified, in giving his deposition, that he would come from Orange County where he lived and was employed to Los Angeles on weekends, Saturdays and Sundays, and some evenings to render his services as Receiver. (R. 445-446). At trial he explained that he came to Los Angeles during some week

that the Court's suggestion the Receiver occupied one of the apartments in one of the apartment houses. He employed a Mr. Harrison from Monday through Friday to keep the books and left instructions for Mr. Harrison in writing on occasions. (R. 446). A diary, Exhibit “B” (R. 393-404) was kept by the Receiver and he testified concerning the entries:

“Those entries were made in the evening after we both returned home. It was a composite of the work, for the most part, that was accomplished during a particular day.” (R. 389-390).

in the bank. He explained (R. 264-265) that she handled the:

“decorating, purchasing of material, and overseeing the operations of the actual refurnishing of some of the apartments . . . she represented in a good many of our contracts with service people with the managers, with the various tradespeople we had to deal with . . . She performed various duties. Among them was overseeing the decorating of a lot of these apartments. She made periodic trips every other day, practically, to the various apartments and picked up the monies that were on hand and collected by the managers.” (268)

The Receiver's rendition of services other than delegating to Miss Cosgrove is best ascertained by reference to the record.

On December 1, before he qualified as Receiver, he and his attorney, who had yet to be appointed by the Court as Attorney for the Receiver, took control of the Trust's bank account at the Union bank and cashed checks at the apartment houses and took possession of the monies. (R. 552). On February 25, 1954 he had a conversation with his attorney regarding a conference he was to have the following day with the Court concerning appellants having settled their law suit. (417). He testified that on the evening of February 26, he had a conversation with his attorney:

f February 26, 1954, relieving you of your active duties of management?

“A. That is correct.

“Q. Of the five apartments, or the Trust assets?

“A. Yes.

“Q. Did your attorney also inform you that you were to only retain the monies in the banks and under your control?

“A. I believe he did.” (R. 418)

the stipulation of the parties and the Court's Order directed him to collect rents and retain money in bank under his control until 5:00 o'clock P. M. on February 28th. He failed to collect the petty cash fund the amount of \$785.00 in the possession of the manager. (R. 419). He estimated, when accounting, that in the amount of \$2000.00 were collected by the managers on February 26, 27 and 28 (other evidence established the amount as being \$1,290.59), and he did nothing about it. (R. 419). The Court's decision of October 5, 1954, explains that the Receiver even after February 26th order did on February 27, 1954, agree that he would remain in possession and was justified in believing that he should make payment due March 1, 1954, upon a trust deed installment secured by one of the apartment houses. At R. 423, the Re-

though the January 1st payment was made on January 18th (R. 630) and the February 1st payment on February 9th. (R. 631).

On Sunday, March 7, 1954, the attorney for the Receiver testified that he was at the Receiver's home in Corona Del Mar after a golf game. After dinner the Receiver Mr. Hallberg and Mrs. Hallberg (Miss C. Hallberg) discussed the problem they had concerning creditors' bills or statements that were not received until after March 1st.

"Mr. Hallberg telephoned Judge Tolin in my presence and put the problem to him. I then came on the 'phone. . . I explained that I had contacted the attorneys for the plaintiff and defendant and Mr. Enright objected to the Receiver paying those bills and that Mr. Camusi was agreed that they should be paid by the Receiver. Judge Tolin then and there instructed me to pay those bills, that is, that the Receiver should pay those bills and those payments are evidenced by the schedule attached to the Receiver's Report heretofore (R. 545).

E. Accounting Services and Experiences.

The Receiver testified concerning these services in support of his fees that he had set up a new bookkeeping system. He testified in his deposition that he, while in college at Chicago, did part-time accounting work in school (R. 911). At the trial he testified that he

During the week of December 1, 1953, he took over Mr. Richman's five apartment managers as his employees and also employed Mr. Richman's secretary-bookkeeper as Mr. Harrison. (R. 537). Mr. Harrison had kept Mr. Richman Trust books during the period May, 1952, until December, 1953, for Mr. Richman. The Court then required the Receiver to file an accounting within 60 days, or about February 2nd, 1954. The attorney for the Receiver filed an Affidavit in support of an Order extending this time (R. 45), stating that the attorney was not available to counsel with the Receiver and his bookkeeper Mr. Harrison during the week January 24th. The Court made an Order extending the requirements of the local Rule 18(b) for a 60 day accounting to March 20th, 1954. Bookkeeper Harrison was discharged at about the same time as this Court Order and Affidavit. The discharge occurred at the time the bookkeeper was interviewed by Mr. Richman concerning the Air Pollution criminal citation hereafter set forth. Thence the Receiver employed a bookkeeper named Findeisen. The Receiver never called the former bookkeeper to explain why it was that the books were as incomplete as shown by the testimony of Richman (R. 689-700). The nature of the accounting as shown (R. 104-121), reveals the bookkeeping problems, if any, in the keeping of records of receipts and disbursements for the five apartment houses. The amount of money, if any, that should be allowed the Receiver

F. Refrigeration Break-Down.

Maude Kennedy, the manager of the Western Arms Apartment House, testified that the equipment furnishing refrigeration to the apartments failed February 16, 1954, and she tried on the 17th, 18th, and 19th to contact Mr. Hallberg. On the evening of the 19th Miss Cosgrove called and asked if she was attempting to get in touch with Mr. Hallberg. That by the morning of the 19th, 21 of the apartments were without refrigeration. The Receiver's diary (R. 403-A) contains a note under the date of the 19th.

“To W. A. re refrigeration John Dougherty

The Receiver explained (R. 441) that Mrs. Hallberg did not report to him on the 16th, 17th, or 18th this refrigeration failure, and stated:

“At this time, no, because the refrigeration service company would have automatically been called.”

He could not recall this failure being reported to him and stated:

“I do not believe it had been reported. However, I cannot recall exactly because there is no mention in my diary here.”

In response to the Court's questions concerning the Receiver being able to:

“recall how much time you gave Orange Court

the emergency arose and the time you arrived there.”

“It is pretty hard at this time to state. I do know I went in there and as far as the actual work on the unit was concerned, the men were more capable than I was of doing the required amount of repair; my being there wouldn’t have helped any.” (R. 436-437).

Miss Cosgrove testified she phoned Mr. Hallberg at the Orange County office; she had not told anyone where he could be reached there. (R. 526)

G. Air Pollution—Criminal Citation.

Appellant Richman delivered to the Receiver the papers and file pertaining to Exhibit F. (R. 801-803), a contract for the installation of an air pollution control unit about December 5, 1953. (R. 636). Barney Malis, an agent of the contractor with whom the contract was made to install the unit testified that after attempting to contact the Receiver, Hallberg, several times in December, without success, was advised by Roy Harrison (the Receiver’s bookkeeper):

“He advised us at that time that as the Federal Receiver for the apartment house he was not bound to the contract and to hold up and do nothing.” (R. 702)

The timesheet of the attorney for the Receiver and

“Examination of files with reference to installation of incinerator equipment for Canterbury and Oliver Cromwell and liability of Receiver to carry out contracts for such installation.”

He testified he advised the Receiver that contracts were valid and binding and that they should be carried out, and that the balance of the 90% purchase price was not to be paid until after the installation had been performed and permit issued by the Air Pollution Control District. (R. 557). On January 13, 1954, Exhibit 4 (R. 711), a Citation for violation of Air Pollution Control District—Los Angeles County, was issued. Witness Manalis testified that about a week before January 22, 1954, he received a call from Mr. Harrison who advised a Citation had been issued and to proceed with the work. Manalis advised Harrison that they could not proceed with the work until the blueprints that the Pollution District had approved had been returned to him. Miss Cosgrove testified that she heard Mr. Hallberg tell Mr. Harrison about January 13th, to attend to the Citation issued by the Smog Control District (R. 519). The receiver admitted that he saw a Memorandum dated December 22nd, reporting that installation of the smog units were in suspension. (R. 711). The drawings were transmitted by Mr. Richman to Mr. Hallberg on December 7th. (R. 648). On January 22nd, Hallberg came to the office of the Receiver located at the Oliver Cromwell Apartment House and viewed through his briefcase and found the drawings. (R. 648).

malis to proceed to install the units. (R. 646). At 753) the Receiver explained that after January he requested Harrison to deliver the blue prints away. A criminal complaint was filed with the Angeles Municipal Court and Citation issued for manager of one of the apartment houses and Mr. man. Miss Cosgrove had done nothing concern- the Citation and when the criminal complaint was l on January 27th, she went out to Mr. Gordon Lar- s office (Los Angeles Smog Control Director). (R. 6. The criminal complaint required appearance in Municipal Court on February 1, 1954. The attor- for the receiver left a telephone message at appel- Richman's office between 4:00 and 5:00 p.m. on day, January 29, 1954 that Mr. Richman was named l defendant in a Criminal Complaint with refer- e to the incinerator at the Oliver Cromwell, that a ring was to be held the following Monday at 9 a.m. 407). Richman, his attorney, and the attorney for Receiver appeared on February 1st and upon re- st by the attorney for Richman, criminal proceed- was continued and, finally, the City Prosecutor re- sted dismissal after the Receiver's attorney assured the equipment was being installed.

H. Receiver's Fees.

The Petition of the Receiver prayed for reasonable . The District Courts Rule 18 (c) (4) requires a

“The Court: The court should note for the record here that when the Receiver was engaged in the preparation of his report either Mr. Hallberg or Mr. Whyte—I don’t recall which one called me and said, Do we have to set forth a particular amount or may we leave it to the discretion of the court and ask for a reasonable fee?”

“I told them I would like for them to set forth in detail what had been done and if they wanted to leave it to the court to determine a reasonable amount that the court would not insist upon compliance with the rule that an amount shall () be prayed for. But they could leave it as reasonable or they would state a specific amount.

“I was then told that Mr. Whyte felt he ought to put in a specific amount, which he did, and that Mr. Hallberg preferred to leave his to a prayer for a reasonable amount.” (R. 254)

Objections to the Receiver’s Petition had been made upon the ground that it did not comply with the Court rule specifically requiring a Receiver to set forth a specific amount he desired to be paid as fees. The Court inquired from the attorney for Richman what fee Richman felt should be allowed for the Receiver (R. 256). The attorney explained (R. 258-261), the problems appellant had in determining what would be a reasonable fee and concluded:

“I would like to hear the man say what he feels he is entitled to for his weekends or his tri-

“We had better take full evidence on what he did.” which resulted in several days trial. (R. 261).

At the end of the first day’s hearing on May 12th Court Stated:

“We will begin this case tomorrow at 11:00 o’clock. Please let’s not try to make a career of it. It is the sort of thing that should have been over by now. It is the sort of thing that is customarily handled on a Monday motion calendar.” (416)

Thereupon counsel for Richman inquired from the mess Roy E. Hallberg, Receiver:

“Q. How much compensation do you personally feel you should receive, Mr. Hallberg?”

“A. Well, in my Petition I am leaving that entirely up to the Court.”

Appellant explained his dilemma to the Court, arising out of the Receiver not stating what fees he would consider satisfactory, as required by the rules, and the attorney for the Receiver petitioning for \$3,000.00 ordinary fees and extraordinary fees, without specifying amount, whereupon the court assumed responsibility for the Receiver failing to specify the amount of fees he desired. (R. 624). After the Court had rendered its decision of October 5, 1954, awarding the Receiver \$6,000.00 fees and his attorney \$1,000.00, another hearing was had at the request of the Court in its

able and that \$3,000.00, plus extraordinary fees would be reasonable the Court stated concerning Mr. Hallberg's fee:

“Now, Mr. Hallberg asked for less than he wanted out of the Court. I increased, not the prayer of his petition, but the tenor of his testimony, because I felt that he had not given any account to the Court of having to account so fully in court, as was required as by the accounting which he had prepared and filed.

“He was brought before the court almost as if he were accused of a crime here and was treated by some of the parties to the suit, or by one of the parties to the suit and one of the attorneys to the action with less respect than I have seen embezzlers treated when I was handling the criminal calendar of the court.” (R. 858-859).

Appellant was never informed as to what fee Receiver Hallberg desired other than he would rely upon the Court to fix a reasonable fee. Appellant established the facts in the Court, presents them to this Court and an effort to determine a proper fee, for this Receiver who has as yet to state what amount of fee he is asking for under Rule 18(c)(4).

During the October 12, 1954, presentation by the attorney for the Receiver seeking additional attorney fees, the Trial Judge stated concerning the Receiver's fees:

“The Court was interested, however, that

appeal, or it was a promised appeal then, or the possibility of settlement, the court was interested that the court's administration of the property should not be so costly as that which the court has found was excessive. I expressed that to everyone in the case." (R. 858)

Appellant Richman's administration of the property under the Trust from November, 1945 to December 2, 1953, resulted in an increase in value from \$375,000 to \$1,200,000. (R. 603-604). He had been operating the assets under the name Nagel-Richman during the period 1936 to 1945. He had operated apartment buildings for banks and trust companies commencing about 1936. (R. 602-603). He contributed one-half the assets to the trust. Richman's compensation under the Trust agreement was fixed at 10% of receipts, exclusive of capital assets. The Receiver's report showed total receipts of \$94,153.59, which included \$377.35 being "over" than rents receipts or rental collections in the amount of \$93,776.24. (R. 105). This would have resulted in a fee to Richman of \$9,377.62. (Richman's calculations for the same months a year earlier resulted in a receipt of \$97,404.58). (R. 600). In addition to Appellant Richman's ownership of one-half the capital assets of the Trust, his time and experience in administering the Trust as agent, he paid the expenses of managing the properties out of his 10% fee.

"I furnished the office, telephone, all equip-

He did not pay the phone bill for the managers the five apartment house. They were paid by the trust. He testified:

“Mr. Harrison was paid by me entirely. I was never an employee of the Trust, or never was any other secretary of mine an employee of the Trust. I paid the social security, unemployment compensation insurance on my secretary.”

“The Court: The books and records of the Trust were kept at your expense? You paid the entire cost for their keeping?”

“The Witness: I did.” (R. 604)

The Receiver's accounting shows a total expenditure for salary of bookkeepers and other salary expense \$1,628.18 (R. 110, Ex. 2); Petty cash \$180.48; Rent of apartment occupied by Receiver \$65.00 a month would be an additional \$195.00; Receiver's fee \$8,000.00; his attorney \$1,800.00, resulting in a total of \$9,803.68, exclusive of miscellaneous expenses, some of which are shown in the Receiver's accounting typewriter rental, pay roll taxes and other items. The \$9,803.68 at least will be paid out. The court states it should be less than the \$9,377.62 Mr. Richman would have received.

Reference is here made to the facts heretofore stated, for example: the Receiver's \$355.00 a month salary while employed by the County of Orange; his previous monthly salary of \$350.00 a month while employed

Employee of Morgan Construction Company for a few months in 1951, as bearing upon this question. The record demonstrates that the Receiver delegated duties to Miss Cosgrove, who in turn relied upon five managers of the apartment houses and Mr. Richman's former secretary, the bookkeeper Harrison, to operate the properties and keep the records.

Other evidence presented by the Receiver upon the question was the testimony of Jefferson A. Mann (R. 298-324), who testified he was connected with R. A. Mann & Co., a real estate concern which had been operating for over fifty years in Los Angeles; that it managed properties for individuals (R. 298). He identified the Los Angeles Realty Board Schedule of Management Fees (R. 309), which was applicable to apartment houses (R. 310); that such manager bore his expenses of collecting the rents and making an accounting; made recommendations to an owner concerning management, renegotiated contracts, loans, and the major decisions as to alterations. The schedule fees provided:

“ . . . when the monthly rentals from the single tenants or the average monthly rentals from two or more tenants in the same building is over \$2,000.00, the charge shall be 3%.” (R. 313).

Objection To Receiver's Report.

Appellant Richman's Objections to the report of

acts alleged in the Report, when in fact he had delegated to others the performing of those acts (R. 120); the Receiver's failure to perform the Air Pollution Control, Inc., Contract pertaining to the installation of smog control units (R. 127); failure to be available or otherwise supervise the maintenance of the refrigeration unit which failed at the Western Arms Apartments (R. 128); failure of the Receiver to carry out the Order of the Court dated February 26, 1954, in that he failed to collect rents which he stated in his account to be \$2,000.00; failure to retain control of the Petroleum Cash fund in the hands of his agents-managers in an amount of \$785.00; his act of paying \$2,027.25 on February 27, 1954 (R. 134-135); and his failure to pay Appellant's claim, in the amount of \$3,104.33 (R. 136). During trial it was ascertained that the Receiver in no manner accounted for or reported concerning the \$400.00 deposit upon Workmen's Compensation, which \$158.00 was refundable to him (R. 667) rather than he turned it over to appellant Tidwell. (R. 664)

J. Attorney's Fees.

Appellant Richman's Objections to the attorney's fees claim for ordinary services in the sum of \$3,000.00 plus an unspecified amount for extraordinary services were upon the ground that they were excessive, upon the further ground that the attorney unreasonably expended time, and improperly advised the Receiver. Among the latter class of acts were:

money to them and, in fact, collecting moneys from one of the managers before the Receiver was appointed; 2) The attorney's failure to advise the Receiver that nonperformance of a Smog Control Contract might result in criminal prosecution; 3) The attorney apparently erroneously assumed that a litigant whose property has by Court Order been placed in the possession of a Receiver has no right to make inquiries concerning his property or the acts of the Receiver. After the Criminal Complaint had been filed against Richman, as an owner of one of the apartment houses and Agent for the Trust, thereafter the attorney for the Receiver had left a telephone message at Mr. Richman's office late on Friday afternoon advising that the Criminal Citation was set for hearing on Monday morning. Mr. Richman on Saturday went to see the Receiver's bookkeeper Harrison to find out what had happened. The attorney for the Receiver objected to the statements made by the bookkeeper as being hearsay and asserted:

"but to go behind the Receiver's back, as Mr. Richman did in this instance, to go out and talk to his agent behind his back, to spy upon his operations without his knowledge, seems to me that those statements are clearly outside the scope of the agent's authority." (R. 643).

The services rendered by the attorney are stated to be evidenced by the Petition to Employ Counsel (R. 644).

uary 15, 1954 (R. 216-230), the Report and Petition for fees.

Appellant presents the question as to whether not this voluminous record and appeal would be pending had the Receiver and his attorney complied with the Court Rules as to filing an accounting and specifying the amounts of fee they desired, in their Petition. Services rendered in this category are shown by record. Affidavit of the attorney, and Order of Court extending the Receiver's time to file his final report as required by the Rules. (R. 44). Had Receiver or his attorney made a disclosure as to Receiver's experience, qualifications and manner in which the Receiver was administering the property, that is by delegation while he was employed by County of Orange, this record and the issues presented would not be still pending. The Receiver and his attorney took the position they were defending themselves, when it was their duty as fiduciaries to explain their whereabouts, acts and qualifications when attempting to justify them and the fees they sought. The original award of \$1,000.00 to the attorney was ample and even the \$1,800.00 later total award was less than the \$3,000.00 plus extraordinary the attorney sought. The court itself chastised the attorney when granting him the additional \$800.00. (R. 865, 867).

SPECIFICATIONS OF ERROR

It was error for the Trial Court to assume it had jurisdiction to construe and enforce Richman's and Tidwell's Settlement Agreement evidenced by the written offer dated February 19, 1954, and written acceptance on February 25th, 1954, except to the extent that it direct the Receiver to account, protect the rights of any other persons not parties to this litigation, and impound the remainder of the funds subject to the directions of Tidwell and Richman, the parties to the settlement agreement. (R. 137, 138, 154, 245, 685, 686).

It was error for the trial court to award a credit in favor of Appellant Tidwell against the balance of the funds in the possession of or under the control of the Receiver upon the following items:

- A. One-half of asserted utility bills amounting to \$938.75;
- B. One-half of certain taxes amounting to \$2,476.38;
- C. One-half the cost of certain catalytic units (smog control) amounting to \$1,300.00. (R. 195)

The Court erred in failing to surcharge the Receiver on account of rents collected after the settlement and before 5:00 p. m. February 28, 1954,

sum of \$785.00, being a petty cash fund under the control of the Receiver, subject, however, to the Receiver not being personally surcharged in the event the Appellant Tidwell is surcharged with these amounts. (R. 184, 185).

4. The Court erred in failing to award Appellant Richman a credit upon the funds remaining in the possession or under the control of the Receiver for his November, 1953, fee under the Trust Agreement, in the amount of \$3,104.00 but rather awarded him \$1,862.60. (R. 194).
5. The Court erred in ordering that the Receiver reimburse himself from the moneys in his possession to the extent of \$89.20 paid out by him for copies of depositions. (R. 195).
6. The Court erred in awarding to the Receiver Roy Hallberg a fee in the amount of \$6,000.00. (R. 194).
7. The Court erred in awarding to John W. Hall Attorney for the Receiver, a fee in the amount of \$1,800.00. (R. 194).
8. The Court erred in determining that the Final and Final Account and Report of the Receiver was full and correct. (R. 193, 194).
9. The Court erred in failing to disqualify Trial Judge to hear the settlement of the Receiver's Account. (R. 157, 158, 456, 461).

ARGUMENT

Identification of Error 1.

Appellant Richman acknowledges that a court of equity has power and control over its Receiver but that the power and control is for the benefit and subject to the direction of the parties to the litigation except where some public interest, as distinguished from private rights, might be involved. The Receiver and the parties exist for the benefit of the citizens—the parties to the litigation. The parties to litigation, after appointment of a receiver, have the right and the duty to minimize litigation and settle their differences. Having made a Settlement the Court should—and we assert must—make all reasonable and proper Orders requested by the parties to carry out the settlement. Here the parties agreed as a part of their Settlement Contract that they would make a Stipulation that the Receiver be relieved of his active duties at 5:00 p. m. February 28, 1954, and thence he account as of that hour. The parties submitted their Stipulation and the Court made an Order carrying it into effect, both dated February 26, 1954. The Settlement Agreement itself evidences the trust existing between the parties and their counsel and reveals an effort to spell out principles for and a plan of carrying out the settlement. The offer, which Mrs. Zell and her attorneys in writing accepted “unconditionally” (R. 143), recited the circumstances as

half years ago before suit was filed, namely division of the trust. The court in the decision avoided any intimation of fraud on the part of Mr. Richman and your auditing has not produced any fraud. Therefore, until such time as the court has sustained your contention of any fraudulent acts on the part of Mr. Richman, you may expect any concession from Mr. Richman that in any way implicates him with fraud.

“Your intimations that any arrangement Mr. Richman might make that he would not live to are not appreciated. Bear in mind the record in this case is full of examples of Mrs. Tidwell changing her mind after agreements have been made, and I can assure you that anything Mr. Richman agrees to will be carried out.

“In regard to your request that I spell out exactly the precise terms and wording of the release I do not think that is at all necessary. Any agreement made contemplates a full release of any and all claims that either Mr. Richman or Mrs. Tidwell have or think they have against the other from the beginning of the world to the present time. If this matter is going to be terminated it is my desire to have it terminated completely and not by use of trick terminology which might subject it to other lawsuits in the future.” (139, 140).

The Court itself was aware of the family difficulties existing between Tidwell and Richman. Apparently it took upon itself the arranging for the

y on a Sunday evening after a golf game on March 4, called the Trial Judge and advised him that a dispute existed between Tidwell and Richman concerning payment of certain expenses. The attorney the Receiver testified he advised the Trial Judge and the attorneys for the parties were not in agreement.

The Trial Judge directed the Receiver and the attorney at that time by phone to pay the various items without consulting with or considering the desires of the parties to the settlement.

The Court was sufficiently informed by the terms of the February 26th, 1954 Stipulation (R. 54) of the Court's order to make its Order on February 26th terminating the Receiver's general powers by its Order directing the Receiver to terminate his active duties and to turn over the assets to Tidwell:

"excepting money in bank and under the control of the Receiver".

The Court realized the limited powers of the Receiver is apparent from its Order directing the filing of the dismissal of the action with prejudice, when it ordered the filing of dismissal on March 22, 1954, in the following terms:

It is so ordered except that jurisdiction is retained over all monies, credits and assets in possession or under control of Roy E. Hallberg, Receiver heretofore appointed herein, and over said

These events having occurred, Appellant Richman made his Objections to the Report and Account of the Receiver, alleged that the Trial Court had no power to interpret or construe the litigants' Settlement Agreement of February 25, 1954, and alleged that each was entitled to apply to a court of competent jurisdiction to initially and originally determine their respective rights under their settlement contract. (R. 138).

The receivership was ancillary and incidental to the action which had been dismissed with prejudice. The Court by its Order of February 26th divested the Receiver of control over the subject matter of the receivership "excepting money in bank and under control of the receiver". These were the only assets under the control of the receiver subject to his accounting for his administration, when the Court on March 22nd ordered the dismissal with prejudice and spoke out its jurisdiction over the Receiver to fix his and his attorney's compensation.

Aside from the events which seemed unusual to Appellant Richman, such as the Trial Judge forthwith ordering the appointment of the Receiver on November 30th, and the representations made concerning the Receiver's availability, experience and qualifications and his delegating his duties to Miss Cosgrove, Appellant Richman had the right, in the event he could not agree with Tidwell as to the construction of the settlement agreement, to cause such a dispute to be

by a court of competent jurisdiction. That his opinion to the Trial Judge proceeding to construe the contract was justified, is evidenced by the extended spasmodic hearings during the months of May and June resulting in the Court approving the Receiver's Report and Accounting as being correct in this instance. Obviously, such a blanket approval is an error because:

The Court, in another part of his Order directed that a payment made by the Receiver in the amount of \$2,027.27, being an installment due on March 1, 1954, was an improper payment on the part of the Receiver. (R. 193).

The accounting of the Receiver did not account for rents during the period February 25th-28th, which his Report recited to be the sum of \$2,000.00, but which was shown by the evidence to be \$1,290.59, and which item was acknowledged in the Court's Memorandum Decision (R. 184). The accounting acknowledged petty cash funds, but the Receiver failed to retain control of them and, in fact, permitted Tidwell's agents to take possession of them, as acknowledged in the Decision. (R. 185).

The Court in its Order recited:

"The Receiver failed to pay certain utility bills incurred in the month of February, 1954, in the sum of \$1,877.50" (No evidence to sup-

taxes amount to the sum of \$4,952.77. Receiver further failed to pay for two electrolytic units in the sum of \$1300.00 each. . . (R. 193).

Each of these purported Findings and the portion of the Judgment which thereafter ordered certain benefits for Tidwell constituted and was a construction of the Settlement Agreement which was beyond the power and right of this Trial Court. These points are in addition to and aside from the fact that the Court ignored the written escrow instructions signed by the settling parties and their attorneys providing that there be no prorations, specifically none for rent or taxes.

Specifications of Error 2, 3 and 4.

The Trial Court's Memorandum Decision (R. 188) and its Order of October 22, 1954 (R. 189) each in part interpreted and by order applied the Settlement Agreement of the Appellants. Court ordered pretrial on June 21, 1954, Appellant Richman's Exhibits A through E were received, a continued hearing was had on September 27, 1954, the court sustained an objection to Appellant Tidwell's evidence (R. 835-837), no continuance trial was ever held. The gross abuse of judicial discretion charged by Richman arises out of the fact that when Appellant Tidwell offered on September 27, 1954, evidence as to her reimbursement claims for real property taxes and utility bills the court sustained an objection (R. 837) to this evidence leaving no evidence

the Settlement Agreement verbatim appears R. 144. It consists of a February 19, 1954 letter offer- to buy or sell under the terms stated in the letter. of which was that the parties would stipulate for Receiver to be relieved as of February 28, 1954 that the Receiver would report; and/or after pay- or provision for the Receiver's claims and ex- s and operating obligations, any funds remaining be divided equally.

Appellant Tidwell contended in the trial court that written agreement and the escrow instructions specially contemplated by the agreement must be con- sidered together under California Civil Code 1642 citing *Stanley v. Stanley*, 32 Cal. (2), 584, 197 P. 2d 321; *Pigg v. Pigg*, 92 Cal. App. 329, 268 P. 463; *Womble v. Womble*, 3 Cal. App. 527, 86 P. 921. For Richman the court was advised (R. 821) that he agreed with the proposition and cited a more recent decision. *Lesch v. Handelsman*, May, 1954, 125 Cal. App. (2) 243, 262 P. 2d 563, where the court stated at 567:

“There are two instruments involved here, the agreement of purchase, and the escrow instructions. Where the terms of an executory agreement for the sale of real property are clarified by the provisions of signed escrow instructions, those instruments are to be considered together in determining the understanding of the parties and in ascertaining their rights and obligations.”

accepted the offer by her letter of February 25 w both she and her attorneys signed the instructi (R. 800) which specifically provided that there w be no proration of taxes. The escrow instructions tained the provision:

“The following adjustments only are require this escrow.”

No adjustment or prorations were provided for. cifically blank spaces were provided for the inser of the date for prorating taxes and rents and the v “none” was inserted.

The abuse of discretion by the trial court beco more glaring as a result of it ordering proration taxes and utilities when Appellant Richman infor the Court at pretrial (R. 837) that in the event well’s proffered evidence as to taxes and utilities penditures were to be received in evidence it w necessitate a trial for the following reasons: Ap lant Richman had paid personal property taxes w otherwise should be prorated and an accounting o monies received by Tidwell after March 1st on acc of utilities would be necessary. The trial court st that in the event it changed its ruling it would app a Master to take Evidence. (R. 837).

The Order of the trial court was further errone in awarding the buyer Tidwell one-half the cost o catalytic units, amounting to \$1,300.00. These c contracted for before the Receiver was appointed.

nal citation on February 1, 1954. The contract specifically provided (R. 802) that the balance of the base price was "payable" upon receipt of the Los Angeles County Pollution Control District Permit to operate." The permits were issued (R. 805) on March 1, 1954. The purchaser Tidwell was, under Settlement Agreement, (para. 4):

"entitled to all receipts and shall assume all operating obligations of Richman Trust from March 1, 1954 on or until the appointment of a Receiver might occur under 7(c) hereof."

Plant Tidwell purchased the assets subject to the Receiver operating the assets and collecting the rents on February 28, 1954. The smog control catalytic converters were being purchased after March 1, 1954 on or after the date when the Los Angeles County Pollution Control District issued a permit (March 9 and June 2) although they may have been physically installed on or after March 1, 1955.

The parties specifically provided an exact hour in stipulation, Exhibit C, (R. 798) when the Receiver should terminate collecting the rents. It was 5:00 o'clock, Sunday, March 28, 1954. The Court in the Order, Exhibit D, (R. 798) carrying out the stipulation, both of which provided that the Receiver was to carry on his active duties of management and control and possession of the assets until 5:00 p.m. on March 28, 1954. Thereafter, the Receiver was re-

5:00 p.m. on February 28 and the cash funds in amount of \$785.00 in the possession of the Receiver, the managers of the apartments, were "assets of Richman Trust." The Court then deducts that Tidwell purchased the assets she was entitled to the sums of money. Obviously, such a deduction ignores the terms of the Purchase Agreement, the Stipulation of the parties and the Court's own order that she was to purchase as of 5:00 p.m. February 28, 1954 and the receiver was to retain all the monies and receipts before that hour. After an accounting the purchaser was entitled to one-half the remainder. The Order of the Court fails to carry out its decision concerning the agreement made by the Receiver on February 27, 1954 for the amount of \$2,027.28 for the benefit of Tidwell. The Decision explains (R. 186) that the Receiver could not have anticipated on February 27 that this Trust's installment payment would not have been paid by March 1st, three days later. But the record without conflict shows the Receiver and his attorney discussed the settlement on the evening it was made on February 25 and the attorney explained the February 26th stipulation and order to the Receiver. (R. 418-419). The Court concludes that Richman is entitled to a lien upon the funds for this amount and gives him one-half for half the amount, to wit, \$1,013.64 in its Order. (R. 195). This would appear equitable and proper were not for the fact that the whole \$2,027.28 should be returned to the funds, thence the fund divided

nt Order is to substantially award Tidwell practically three-fourths of this \$2,027.28 payment.

ne Receiver's accounting showed a deposit on account of Workmen's Compensation Insurance in the amount of \$400.00. It completely failed to account for the unused portion of this item. There is no conflict of evidence that refund of \$158.00 was due and that the Receiver turned the policy and refund over to the appellant Tidwell.

opellant Richman's agency contract to manage the properties, of which he was a one-half beneficiary, required him to pay 10% of receipts, exclusive of capital assets. He had received this fee during the many years he managed the properties which increased in value from \$200,000 to \$1,200,000. The Receiver acknowledged the fee in his accounting in the amount of \$3104.33 and the balance of the amount should have been ordered paid.

Amendments of Error 5, 6 and 7.

The Court erred in awarding a fee of \$6,000.00 to the Receiver, \$1,800.00 to his attorney, and deposition fees in the amount of \$89.20.

The late expression of the court's attitude in awarding compensation to receive is found in *In re Pittsburg, S. & N. R. Co.*, 75 Fed. Supp. 292, where the court adopted a previously established rule:

"There are no hard and rigid rules for deter-

on Receivers (second edition). The same is in Section 621, cites the following from 34 472, which was quoted with approval by the Circuit Court of Appeals in the case of *Eames v. Clafin Co.*, 2 Circ. 231 F. 693, 695, as illustrating the controlling factors to be considered by a court of equity in fixing the compensation of equity receivers: 'The considerations that should be controlling with the court in fixing compensation are the nature of the matters administered, the amount involved, the complications attending it, the amount of bond required, the time spent, the labor and skill needed or expended, the degree of success attained under all the circumstances, the fidelity to details, the appreciation evidenced as to the responsibilities of the position, the character of the responsibilities, the expedition with which the trust has been administered, in view of the results reached, and the method, character, and propriety of the accounting, having regard, as a standard, to what is paid for somewhat similar services in the performance of official duties, not as a standard in private business transactions. The value of the services rendered should not be considered generally but only with reference to the trust administered.' " (page 297).

Naturally, there are no reported decisions involving a Receiver's fee under the circumstances existing in this case, but a case involving fees of a hotel receiver was found in the early case of *Cake v. Mohun*, 17 100, 164 U. S. 341, 41 L. Ed. 447. At 450 then the

“In view of the fact that the receiver had never been in the hotel business; that he employed a manager at \$125.00, and a part of the time at 150.00 a month, and required of him a bond for the faithful performance of his duties; that he was not prevented from giving his usual attention to his business, and ordinarily spent only his evenings at the hotel,—we are bound to say that, if it had been an original question, we should have fixed his compensation at a considerably less amount.”

Receiver's prior earnings are relevant in determining his fees.

Walton N. Moore Dry Goods Co. v. Lieurance,
38 Fed. 2d 186, at 192.

His prior experience and knowledge is in detail set out in *In Re Insull Utility Investments*, 6 F. 2d 653, 661; that is, there the Court pointed out as an example.

“If the appointee be an engineer or an operator, whose years of experience especially qualify him and he has technical training supplementing such experience, and he gives all of his time to the task, he should be paid more than one who, though entitled to the confidence of the court, is not equally qualified to render the service for which the technical experience of the engineer qualifies him. Nor should one award the same compensation to an outsider who does not devote all of his

“Another important factor in the compensation of the receiver is the time devoted to the work and the character of the work performed. Does such appointment exclude the appointee from trying on other work? Is the appointee named, a receiver in other suits? Are the appointees engaged in business, and does the appointment terminate such participation?”

That compensation should be moderate is the rule.

“ . . . as said in *Penner v. Drilling Development Co.* (D.C.) 293 F. 766, 767, ‘it must be remembered, though too often forgotten, that receiverships are not to enrich the encumbered counsel.’ ”

Bailie v. Rossell, 60 Fed. 2d 806, 807

In re New York Investors, Inc., 79 Fed. 2d 100, 101 where an Appellate Court pointed out when reviewing the Trial Court’s allowance by fifty per cent:

“The Supreme Court has given notice on more than one occasion that receivers and attorneys engaged in the administration of estates in the Federal courts of the United States and in litigations affecting property within the jurisdiction of those courts should be awarded only moderate compensation and that many of the allowances heretofore awarded have been too high.” (Page 185)

Finally, the maxim, he who comes into equity must come with clean hands, has application to any comparable situation. Here the Receiver’s hands are a

Orange and his delegating his receivership in to Miss Cosgrove. As explained in *Johnson v. Cab Transit Co.*, 321 U. S. 383, 387, 88 L. Ed. 18, the doctrine is not to punish a litigant but is the advancement of right and justice. It is not for just to compensate this Receiver at the rate of \$1000.00 a month or \$6,000.00 for services rendered to his wife and for his weekend trips from Orange County to Los Angeles, when he concealed he was for at least one week of the three months a full time employee rendering forty hours services of each week to the County of Orange at a salary of \$355.00 a month.

The Trial Court's Order and Judgment of October 1954, authorized the Receiver to pay the cost of his services of his and his attorney's depositions. Indirectly because not specifically identified, there is involved the failure of the Receiver to retain control of the item of \$35.00, being petty cash in the possession of his managers, and the further item of \$1,290.59, being collected by the managers before 5:00 p.m. February 28, 1954, which the Receiver failed to obtain from the managers and which admittedly was obtained from a purchaser, Appellant Tidwell. Also the balance of the Compensation Insurance Deposit.

The Trial Judge apparently appreciated that the Receiver was subject to being surcharged when it came concerning a contemplated audit on April 12, 1954, at the time it set the accounting of the Receiver

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“If it turns out the receiver is either erable bookkeeper and these records are in shape, or he is a man of no fidelity and has in that capacity here, or with that taint, the expense of the audit will be assessed against the receiver.”

Appellant Richman seeks an application of the law referred to by the Trial Judge which is in substance that the receiver is a trustee. The Supreme Court in *Crites, Inc., v. Prudential Ins. Co.* (1944), 322 U.S. 408, 88 L. Ed. 1356, when reversing a Trial Court decision allowing a Receiver certain fees which he and his attorneys agreed to pool and split upon the ground that the allowance was a clear abuse of discretion, pointed out (414-1360):

“It is obvious, moreover, that Simkins (as receiver) was bound to perform his delegations of duties with the high degree of care demanded of a trustee or other similar fiduciary.”

At 418-1362:

“But whether the parties to such a case should be allowed any fees at all, and if so, in what amount thereof, are normally matters within the sound discretion of the District Court and are not reviewable except where a clear abuse of discretion is apparent. In this case, however, the fact that Simkins entered into a fee-splitting contract is patently illegal, plus the fact that he engaged in other misconduct and indiscretions incompatible with his position as an officer of the court, com-

Woods v. City Nat. Bank & T. Co., supra (312 U. S. 68, 85 L. ed. 825, 61 S. Ct. 493, Am. Bankr. Rep. (NS) 655.”

In the instant case the Receiver boldly refused to pay the Appellant of the sum of money he would accept for his part-time services as Receiver while employed as a full-time employee of the County of Orange. The Receiver's attorney demanded \$3,000.00 for ordinary services; he demanded that an additional amount be paid by the Court for extraordinary services. Naturally, Appellant Richman availed himself of deposition proceedings between April 12 and May 12, 1954 to confirm the results of what was obviously an extensive investigation to find out what qualifications, experience and abilities the Receiver Hallberg actually possessed. The Receiver and his attorney requested the Clerk of this Ninth Court to print substantial portions of their deposition. Their depositions demonstrated the quality of the services rendered by the attorney and the, at least equivocations, of the Receiver and his wife, Miss Cosgrove, when the Receiver was questioned concerning these subjects.

For example only, (R. 331), is an instance where the Receiver, upon being prompted by his Miss Cosgrove, attempted to avoid disclosing his full-time employment by the County of Orange.

Under these circumstances the Receiver should at

of the surcharge in the event Appellant Tidwell counts to Appellant Richman upon these items. The deduction in the amount of the \$6,000.00 fee awarded by the Trial Court will avoid surcharging the Receiver with the expenses incurred by the Appellant in the Trial Court and upon this appeal. In like manner, the award of \$1800.00 to the Receiver's attorney is excessive, considering the nature and extent of his services as shown throughout the record.

Specification of Error 8—Accounting.

Appellant Richman seeks an Order reversing the Trial Court's approval of the Receiver's Report on Accounting as being full and correct. He asserts that it was and should have been easy to have conditioned the surcharge on the Receiver's Account and directed payment of the surcharge out of Tidwell's one-half of the remainder in the following manner:

1. Amount Reported by the Receiver as being under his control and possessions: \$20,000.00
Add the following items, being amounts received by Tidwell:

Petty Cash	\$ 785.000
Rents Feb. 25-28—	
5:00 p.m.	1,290.59
Note Payment	2,027.25
Comp. Ins. Refund	158.00

Total Additions or Sur-
charge:

4,260.84

Total Funds Chargeable to
the Receiver:

\$24,958.55

Direct the Receiver to pay to
debtor Richman the 10%
Trust Agreement Fee for his
services during November,
1933 in the amount of:

3,104.33

Balance Remaining:

\$21,854.22

$\frac{1}{2}$ the Balance of the Fund

\$10,927.11

Richman and Tidwell each
being entitled to $\frac{1}{2}$ the fund,
subject to Tidwell surcharge
Direct Richman the above cred-
its follows:

Tidwell:

$\frac{1}{2}$ the Fund: \$10,927.11

Petty Cash \$ 785.00

Rents 1,290.59

Note Inst. 2,027.25

Comp. Ins. Refund 158.00 4,260.84

Receiver pay to Tidwell: \$ 6,666.27

Richman:

$\frac{1}{2}$ the Fund: \$10,927.11

Fee 3,104.22

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Balancing of the Accounting:

Receiver's Report:		\$20
To Tidwell:	\$ 6,666.27	
To Richman:	14,031.44	\$20
	<hr/>	<hr/>

4. Such fees as this Court deems appropriate proper to be paid to the Receiver and to his attorneys for their services in this transaction shall be paid one-half by Richman and one-half by Tidwell out of the \$14,031.44 payable to Richman and \$6,666.27 payable to Tidwell.

As between Appellants Richman and Tidwell no further problem is presented. Appellant Tidwell at the time of filing this Brief, has asked for and obtained a Stipulation from Appellant Richman that she will not file an Opening Brief. Appellant Tidwell has abandoned her point (R. 973) that she is appealing the Order of the Trial Court in failing to award \$577.50 for revenue stamps and escrow expenses as the only point not heretofore covered in this Brief and if she does she will not be an Appellant of this appeal and will not have been, in fact, one of two parties jointly interested in the protection of a fund. It would appear frivolous for Appellant Tidwell to assert that she is to be repaid the seller Richman's escrow and revenue stamp expenses when she and her attorneys signed the seller's escrow instructions which provide (799 .

“Notwithstanding the printed provision

the costs of the policy of title insurance, revenue stamps and recording and filing of instruments and documents and the seller's escrow fee."

Reversing the Trial Court's Order of October 22, the well established, fundamental rule that where two persons who are the owners of a common fund expend moneys to pay the court costs and expenses to protect the fund, should be reimbursed these costs and expenses. Such a direction by this Appellate Court would do justice between the Appellants, Tidwell and Richman.

Statement of Error 9—Trial Judge Disqualification.

Appellant Richman urges consideration of the record in determining whether or not there was a abuse of judicial discretion arising out of the trial judge refusing, upon Petition, to disqualify himself under the circumstances existing. The Statute reads:

Sec. 455. Interest of justice or judge. Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."

to "in his opinion" decide whether he should disqualify himself is by a Petition to disqualify.

Cyc. Fed. Proc., 2nd Ed., Vol. 1, p. 32,
22 and 23.

It was only after thorough investigation, consultation and deliberation that the appellant Richman, a member of the Bar, approved the filing of the Petition to disqualify on April 30, 1954. (R. 158-164) The Court had on April 12, 1954 (R. 157) made a determination

"that no evidence will be taken concerning the appointment of the Receiver in this action."

Investigation had been in process for several months concerning the Receiver Hallberg's whereabouts and background, culminating in his admissions in the disqualification proceedings on April 22nd. (R. 329-333, 921). With all due respect to the judiciary and its members, it was then believed and set forth in the Petition to disqualify that Judge Tolin was a material and relevant witness to the unclean hands and misconduct of the Receiver, especially the Receiver's representations as to his ability, experience and qualifications.

Appellant Richman and his counsel believe they have a duty to stand up for their cause against the charges of their nominal adversaries Appellant Tolin, the Receiver and his Attorney, and even the majority of the Court. The record will reveal upon closing that there is no discourtesy to any Member of the Bar.

and certainly was not justified in castigating
 at Richman or his Attorney with the assertion
 the Receiver had been treated worse than a crim-
 In *Walton N. Moore Dry Goods Co. v. Lieur-*
 C. C. A. 9th, 1930, 38 F. 2d 186, it was held that
 ary of a receiver prior to his appointment is of
 ntial persuasive value in determining his fees.
 Receiver's salary of \$350.00 a month while em-
 ented by Narmco in 1953, drawing account of
 0 a week in 1951 with Morgan Construction and
 0 at County of Orange for a 40-hour work week
 he was acting as Receiver was proper evidence.
 vere entitled to know whether the Receiver was
 le, as he represented, to take over five apart-
 houses containing in excess of 400 units which
 rties and owners agreed for settlement purposes
 value of \$1,200,000. They were entitled to ques-
 e Receiver concerning his representations as to
 for or as a Receiver in Chicago or managing
 ent properties for elderly, wealthy relatives.

ed August, 1955.

Respectfully submitted,

BRADY, NOSSAMAN and WALKER
 JOSEPH T. ENRIGHT,

Attorneys for Appellant.

By JOSEPH T. ENRIGHT

NO. 17-02
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

RICK I. RICHMAN,

Appellant,

vs.

EDWELL, ROY E. HALLBERG, as Receiver of all the real and
al property constituting the former Richman Trust, and JOHN
TE, attorney for Receiver,

Appellees.

EDWELL,

Appellant,

vs.

RICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the
ad personal property constituting the former Richman Trust, and
WHYTE, attorney for Receiver,

Appellees.

of Appellees Roy E. Hallberg, as Receiver of
l the Real and Personal Property Constituting
e Former Richman Trust, and John Whyte,
s Attorney.

WHYTE,
ney for Appellee Roy E. Hallberg,
as Receiver,

WHYTE,
opria Persona.

TRICK & WHYTE,
uth Broadway

FILED

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II.

The District Court did not err in ordering the Receiver to reimburse himself from the monies in his possession to the extent of \$89.20, paid out of him for copies of his deposition and that of his attorney.....

III.

The District Court did not err in refusing to disqualify the Receiver to settle the Receiver's account and to award fees to the Receiver and his attorney.....

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No. 14702

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

FREDERICK I. RICHMAN,

Appellant,

vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN N. WHYTE, attorney for Receiver,

Appellees.

LYDA TIDWELL,

Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN N. WHYTE, attorney for Receiver,

Appellees.

of Appellees Roy E. Hallberg, as Receiver of all the Real and Personal Property Constituting the Former Richman Trust, and John Whyte, his Attorney.

FOREWORD.

In the interest of brevity appellant Frederick I. Richman hereinafter sometimes be referred to as "Richman," and Lyda Tidwell will sometimes be referred to as "Tidwell," appellee Roy E. Hallberg, as Receiver of all the

JURISDICTIONAL STATEMENT.

This appeal is taken from a final order of the District Court settling the Receiver's account, allowing for the Receiver and his attorney, and providing for the distribution of funds in the hands of the Receiver. [190-196.] Appellants invoke the jurisdiction of this Court under 28 U. S. C., Section 1291.

STATEMENT OF THE CASE.

That portion of appellant Richman's statement of the case which sets forth alleged facts relating to his specifications of error with respect to the Receiver and his attorney¹ (as distinguished from alleged facts relating to the Receiver under the heading, "Statement *Re* Fees—Conduct of Receiver in Gross Abuse of Judicial Discretion," which is found in the material at pages 16-46 of Richman's opening brief.) Such portion of Richman's statement of the case is misleading, biased, incomplete, inaccurate and untrue for the following reasons:

(a) It omits numerous facts material to a determination of the issues herein touching the Receiver and his counsel.

(b) It contains many statements which are not supported by any reference to the record. By way of illustration, and without attempting to specify every instance, beginning at the top of page 34 of Richman's opening

¹Specifications of error, Nos. 3, 5, 6, 7, 8, and 9. (Appellant's Op. Br. pp. 47-48.)

specifications of error with respect to Tidwell²) and

—3—

three separate declarations of asserted fact are in as many sentences. Not one of them is supported by reference to the record. Similarly, in the paragraph immediately following the quoted material on page 42 of the brief several items and amounts are mentioned as part of the Receiver's accounting. None of these is accompanied by a citation to the record, except the first item which is followed by a reference to the record [R. 110, Ex. 2] that does not support the

It is replete with instances where the allusion to the record does not uphold the assertion made. Selected examples are the following. At the end of the last paragraph on page 44 there is a reference to "R. 380" as upholding a certain statement. It does nothing of the sort. Again, on page 24 it is asserted that the Receiver "intended to delegate his receivership duties to Miss Cosgrove, the maiden name of his wife," and is supported by a reference to "R. 380." The record fails to sustain the assertion. The same is true of the statement on page 22 that "Richman could not contact the Receiver after December 18, 1953. [R. 537-538.]"

Accordingly, the Receiver and his attorney deem it necessary to set forth their own statement of the case. In order to aid this Court in comparing the facts recited in the Receiver's statement with the facts as they are recited in the Plaintiff's opening brief, we shall first make a preliminary and general statement of the case, followed by a series of detailed statements whose heading and subject matter

I.

Preliminary and General Statement.

On November 30, 1953, the District Court handed a memorandum decision terminating the Richman Trust of which appellants Richman and Tidwell (brother and sister) were each a trustor, trustee, and beneficiary on the ground that Richman had been guilty of undue influence in procuring his sister's consent to the Trust [R. 13-20.] On the same day the court³ made an order appointing Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, the bulk of that property consisting of five apartment houses located in the City of Los Angeles, California, and named as follows: Canterbury, Fountain M. La Loma, Oliver Cromwell and Western Arms. [R. 21-22, 25.] The approximate value of the trust property was \$1,200,000. [R. 724.]

The order appointing the Receiver fixed his bond at \$75,000 [R. 23-24], and on December 2, 1953, the Receiver filed his bond after the same had been approved by the court. [R. 25-26.] Likewise, on December 3, 1953, the District Court made an order authorizing and directing the Receiver to employ Messrs. Fitzpatrick & Whyte and John Whyte, as his attorneys.⁴ [R. 27-28.]

³Whenever the word "court" is used herein without descriptive language, the reference is to the District Court of the Southern District of California.

⁴Nearly all of the legal services performed by Messrs. Fitzpatrick & Whyte in connection with receivership and later

February 26, 1954, after Tidwell and Richman, parties to the main litigation, had agreed upon a settlement of their differences, the trial court made an order directing that the Receiver "be relieved of his active management, control and possession of the assets of the Richman Trust, as of five o'clock p. m., Sunday, February 28, 1954, and that the said Receiver . . . deliver control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, except money in bank and under the control of the said Receiver" [R. 55-57.] Thereafter, on March 18, 1954, the Receiver filed his first and final report and petition for allowance of "reasonable" fees for his services as Receiver from about December 1, 1953, to and including February 28, 1954. [R. 75-121.] Such petition did not show in what amount fees were being asked, as required by Rule 18(c), Local Rules Southern District of New York, for the reason that the Trial Judge had given the Receiver permission "to leave it to the court to determine a reasonable amount that the court would not insist upon compliance with the rule that an amount shall be prayed for." [R. 254, 624-625, 938.] On the same day the Receiver's counsel filed his original petition for allowance of fees for legal services performed by him on the Receiver's behalf from about December 1, 1953, to and including February 17, 1954. [R. 58-74.] The attorney's petition asked for the sum of \$3,000.00 as compensation for ordinary legal services plus such further sum as the court might think reasonable for extraordinary legal services.⁵

On April 6, 1954, Richman filed lengthy objections and an answer to the report and petitions of the Receiver and his attorney for fees. [R. 125-144.] At a hearing held on April 12, 1954, the court separated the issues, how the money in the hands of the Receiver should be divided between Tidwell and Richman from the question respecting settlement of the Receiver's report and allowance of fees to him and his attorney, and fixed May 11, 1954, as the date for commencement of the hearing on the latter issue. [R. 235, 237, 243.] At the hearing Richman's counsel announced his intention to introduce the depositions of the Receiver and his attorney [R. 244] and such depositions were taken in April 1954. [R. 871, 922.]

The hearing on the settlement of the Receiver's report and the allowance of fees to him and his counsel actually began on May 12, 1954 [R. 246], at which time the Receiver's attorney filed a supplemental petition for allowance of fees for legal services rendered from March 1, 1954, to and including May 10, 1954. [R. 164-165] During the course of the proceedings the depositions of Hallberg and Whyte were introduced in evidence. [R. 250, 544.] The hearing continued for approximately two and one-half days, exclusive of final argument. [R. 246, 265, 340-341, 416-417, 439, 540, 613, 635, 700-755.] All of the time spent in the hearing was devoted to defending the Receiver against Richman's attack on his report and petition for fees and to laying a foundation for determining the amount of a reasonable fee to the Receiver, except that a part of one afternoon session [R. 540-571] and ^{a part of} one morning session [R. 614-620]

ing the course of the hearing Richman's attorney
ed that his client was not attempting to surcharge
ceiver personally but rather, Mrs. Tidwell, the
ful litigant in the main action, and this was so
stood by the Trial Court. The statements made in
gard were as follows:

"The Court: Well, I think the objections as filed
d undertake to apply the surcharge against the
ceiver, but the statement counsel made in court as
what his objective is, or one of his objectives in
e matter here is to have it [392] applied against
rs. Tidwell, who is not the receiver. Is that right?

Mr. Enright: Yes, your Honor.

The Court: So the Receiver came here upon plead-
gs which undertook to have him surcharged, but
e theory of trial, which was announced rather
rly in the trial, is that the attempt to surcharge
not against the Receiver, Mr. Whyte's client, but
against the prevailing litigant in Tidwell vs. Rich-
an. Does that state it?

Mr. Whyte: Is that your position, Mr. Enright,
at you are not now trying to surcharge the Re-
iver?

Mr. Enright: We surcharged that Receiver. We
ked that it be a charge upon the funds in his hands.
hat is the way we pleaded it. That is the way we
ated it in the inception. I am sure the Receiver
nderstood it that way.

The Court: Well, I don't know whether he clearly
nderstood it that way at the beginning, Mr. En-
ght, because I didn't. And while I have great

But it became apparent in this trial settling the Receiver's fees that the attempt is to surcharge the [393] or, as I stated originally, to surcharge Tidwell instead of taking it out of the pocket of the Receiver.

Now, has it all been stated clearly?

Mr. Enright: I think so, your Honor. I like to analyze the record." [R. 617-619.]

"Mr. Whyte: I would like to inquire of the Court and [459] inquire of Mr. Enright, whether there is any intention now to shift the position which I expressed this morning, when Mr. Fussell was on the stand to the effect you were not seeking to charge the Receiver personally for any of the claimed items.

Now, is that correct, Mr. Enright?

The Court: I understand Mr. Enright is seeking to charge the fund which is in the Receiver's hands in this session.

Mr. Whyte: Very well.

The Court: Is that right, Mr. Enright?

Mr. Enright: Yes." [R. 685-686.]

Consequently, there is no issue before this Court as to any reference to any attempt to surcharge the Receiver. Specifications of Error, Nos. 3 and 8, appearing at pages 47-48 of Richman's opening brief, should be disregarded insofar as they allege error below in failing to surcharge the Receiver.

On November 19, 1954, the District Court signed and filed a final order settling the Receiver's account, allocating the fees, and distributing the funds in the hands of the Receiver.

to be the reasonable value of the Receiver's services
the sum of \$1,800 to be the reasonable value of his
ey's services, and it fixed their respective fees at
amounts. [R. 194.] The court also directed that
Receiver reimburse himself from the monies in his
sion to the extent of \$89.20 paid by him for copies
e depositions used at the hearing on his report and
n for fees and his counsel's petition for fees. [R.

pellant Richman has appealed from the whole of
rder of November 19, 1954. [R. 196-197.]

STATEMENT OF THE CASE (Continued).

II.

Topical Statements.

**Alleged Representations—Receiver's Ability, Experi-
ence and Availability.**

pages 16-19 of his opening brief Richman strives to
the impression (which, as we shall see, is wholly
ranted) that at the hearing on November 30, 1953,
ich the District Court announced its intention to
t Hallberg as Receiver, Hallberg made certain rep-
ations, some or all of which were untrue. To this
quotes several statements made by the court on that
on (Richman's Op. Br. pp. 16-19) but mentions no
ents made by Hallberg, except that the Receiver
ed in" with the remark "That is correct" at the
of one of the court's observations (Richman's Op.
17), affirmed that he had a place of business in

tations ("The Receiver didn't come to the court and any representation") [R. 235], to the extent that "chiming in," such affirmation, and such response possibly be construed as representations by the Receiver if they were truthful in every particular.

Insofar as they contained any declarations of the court's observations to which Hallberg replied, "is correct," were as follows (Richman's Op. Br. p.

"The Court: . . .

". . . I have explained to them that you had experience in this type of work in Chicago, your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience it locally has been in the management of your real properties, which were of income nature of similar properties owned by either you or your wife's relatives.

Mr. Hallberg: That is correct."

During the years 1930-1931, in Chicago, Illinois, Hallberg's main vocation was the management of real properties in connection with a court receivership. [R. 378, 381-383, 465-466, 884-885.] He also had local experience in the management of real properties of income nature owned by himself and his wife, consisting among others, of a 16 unit apartment building in Pasadena and a four family unit in Pasadena. [R. 369-370, 881-882, 889-891.]

Furthermore, his affirmation that he had a plumbing business in Pasadena was perfectly truthful inasmuch as the four family unit owned by him and his wife in

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is significant to note that at this same hearing on
umber 30, 1953, Richman's counsel expressed his com-
fidence in the Receiver's integrity and ability when
ted, "I am satisfied that your Honor would not have
ed anyone except a man of not only integrity, but of
." (Richman's Op. Br. p. 18.) It is of further
cance to note that before appointing Hallberg as the
ver the Trial Court invited counsel for both Richman
idwell to ask the Receiver any questions they wished,
o questions were asked. [R. 210-216, 259.]

B. Petition to Disqualify.

April 30, 1954, prior to the hearing on the Re-
's report and petition for fees and the petition of
torney for fees, appellant Richman filed a petition
qualify Honorable Ernest A. Tolin, the District
, upon the ground that the Judge was a material
ss to the determination of what fees should be paid
ceiver in that the Receiver had made certain alleg-
alse representations to the court before his appoint-
when the court was interviewing him with respect
s availability, experience and qualifications. [R.
54.] The petition to disqualify further alleged that
ld be necessary for Richman to call the Trial Judge
witness to these alleged misrepresentations. [R.

we have just seen, if the Receiver can be said to
made any representations to the court before his
tment, his statements were entirely truthful. More-
everything said at the hearing at which it is claimed

Under these circumstances it would have been unnecessary for Richman to have called the Trial] as a witness to any alleged representations made by Receiver at the hearing.

C. Receiver's Availability and Earnings.

With respect to Hallberg's availability to act as ceiver, the record reveals the following:

At the time he took his oath of office as Receiver December 2, 1953, Hallberg did not know that he v be employed by the County of Orange. [R. 363, 379, 355-357.] His work for the County did not l until December 7, 1953. [R. 326.] He had no de hours of employment but was merely required to in a 40 hour week of eight hours a day, Monday thr Friday. [R. 327-328, 335, 343, 346-347.] About of his work consisted in the preparation of data regard to assessing and appraising; such work cou done outside the office or at his home in the even [R. 356-360.]

At the time it appointed Hallberg as Receiver District Court envisaged his job as only "part employment." In this connection the court said:

"The Court: . . .

.

Knowing that Mr. Richman had carried on c ventures [19] while he managed these proper I thought that while it would be part time, it v be a substantial part-time employment, and ha confidence in the man's integrity and ability, I a him if he would serve and he said he would."

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concerning the time which he personally spent on the receivership, Hallberg testified as follows:

"Q. (By Mr. Enright): Actually, the physical method of operation was that commencing December 7th and all through February 28th, and you would make trips up to Los Angeles on the weekends or come up Friday night after completing your work for the County of Orange, isn't that right? A. I came up during the week. I came up Friday, it is true. I was there Saturday. I was even there on Sunday.

Q. Friday evening, Saturday and Sunday? A. During the week I was there on various occasions." [R. 434-435.]

"Q. Well, generally, didn't you do your checking in the operation of these apartments on the weekend, [89] Mr. Hallberg? A. I did some of that.

Q. I mean, that was the rule, wasn't it? A. Not necessarily.

Q. You'd come in on week ends, Saturdays and Sundays? A. Not necessarily. I came in during the week some evenings, as well as days. * * *

[R. 905.]

When one of the apartment house managers was asked how many occasions she had seen Hallberg during the month's period of the receivership, she replied:

"A. I would say between seven, not less than twelve times; perhaps seven, eight or nine times." [R. 503.]

Another apartment house manager, who testified that

in which event she would not have seen the Record [R. 477-479.]

During the entire course of the receivership Hallberg had the assistance of a full-time bookkeeper [R. 270-271]. First, Mr. Harrison, who had been Richman's secretary and bookkeeper [R. 410-411], and then Miss Findeisen [R. 270.] He also was materially assisted throughout by his wife, who represented him in many of his contacts with the apartment house managers and with various service and trades people. [R. 263-264.] In addition, Hallberg supervised the decorating of apartments, made periodic trips to collect the rents and deposited them in the bank, purchased supplies, and helped with the bookkeeping. [R. 263-265, 267-268.] She received no compensation for any of her services to the receivership. [R. 269.]

At the same time that he was managing the affairs of the Richman Trust from 1945 to 1953, Richman was carrying on a private law practice in the City of Los Angeles, which included such matters as the organization of corporations, the preparation of tax returns, and the drafting of contracts. [R. 528-529, 713-714.] During his last year as manager of the Richman Trust, he devoted considerable time to preparing for and attending the trial of Mrs. Tidwell's action against him to terminate the Trust. [R. 714-715.] From January, 1950, until the Trust was terminated, he also acted as President of the Consolidated Mortgage Company. [R. 731-732.]

With respect to Hallberg's earnings and expenses prior to the receivership (exclusive of his accounting

majoring in business administration at Northwestern University where he received the degree of Bachelor of Science and Commerce in 1927. [R. 290.] From 1927 to 1931, in Chicago, Illinois, he was employed by a firm on a full-time basis to manage certain real properties in receivership. The properties consisted of from 100 to 150 buildings, including apartments, a large apartment hotel, flats, bungalows, and residences. One of these buildings, an apartment hotel, was quite similar to the Richman apartment building in the Richman Building. The buildings as a whole were of about the same class as the Richman Trust buildings. [R. 377-381-383, 465-466, 884-885.]

For a period of 13 years before January 1947, he was employed by the Garrett Company, wine merchants in New York. [R. 367-368.] During his last three or four years with this company he received an annual net compensation (before taxes) of \$40,000. [R. 891-892, 367-368.]

He came to California about January 1947, as Western Regional Sales Manager for Refrigeration Corporation of America at a salary of \$10,000 a year, plus a commission override based on volume. [R. 875.] From the time of his arrival in California in 1947, until he moved to San Diego County in 1952, he resided in the City of Pasadena. [R. 367-368.] He remained with Refrigeration Corporation of America for about two years, when the company dissolved. [R. 875.]

About 1949 Hallberg began having trouble with his back—for months he was in bed and in the hospital—and accordingly his employment record from then until the

December 1949, he and Mrs. Hallberg purchased a 16 apartment house in South Pasadena, which they held approximately 11 months, and in which they installed Mrs. Hallberg's mother as manager. [R. 369-370, 890.] Hallberg himself performed many of the managerial duties [R. 369-370] and even did hard physical work on the premises, including painting, carpeting, hanging doors, laying floor tile, and repairing the roof. [R. 463-464, 910-911.] About January 1951, Mr. and Mrs. Hallberg also purchased a four unit apartment building in Pasadena, which they still own. [R. 370, 882, 891.]

Mrs. Hallberg received the degree of Bachelor of Business Administration from the University of Minnesota in 1932. [R. 516.] For a time she was one of the women investment counselors in New York. [R. 516.] She took a year's course in color consulting at the Tishchen School of Design in New York and was consultant for certain properties in that city. [R. 385.] She holds a real estate broker's license in California. [R. 269, 270.]

D. Receiver's Services.

The Receiver's active duties with regard to the management and operation of the former Richman Trust began about December 1, 1953, and continued until February 1, 1954. [R. 255.] The nature of the services performed by him during this period is too varied and extensive to relate in detail, but in general it consisted in handling the myriad problems which arise in connection with the operation of five large apartment houses, such as re-

of account (the Receiver set up a new and improved keeping system), and the purchase of supplies; as in conferring with representatives of government agencies, inspecting the buildings from time to time to determine whether their physical plants were in good working order, comparing the rentals with other apartment buildings in the neighborhood, and appearing in court at various hearings. [R. 77-84, 261-262, 281-284, 287-290, 295, 892-896, 912-913.]

February 26, 1954, the District Court made its order relieving the Receiver "of his active duties of management, control and possession of the assets known as the Richman Trust, as of five o'clock p. m., Sunday, February 28, 1954," and directed the Receiver to "give control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, excepting any in bank and under the control of the said Receiver, and the sum of \$100,000.00." [R. 56.] On the same day the Receiver was informed of the sum and substance of this order by his attorney. [R. 417-419.]

In his statement of the case Richman asserts in substance that the Receiver violated the terms of this order in at least three particulars, to wit:

He failed to retain control of the petty cash fund of \$100.00 in the hands of the apartment house managers.

He failed to collect from the managers the rents which had been collected by them on February 26, 27, and 28, 1954.

On February 27, 1954, he made a monthly payment

A proper understanding of the facts will show that the Receiver did not violate the terms of the above mentioned order in any one of the particulars specified.

First, with respect to the minor amounts of petty cash in the hands of the managers, totalling \$785, these funds were used to pay small day-to-day expenses, such as telephone refunds, salaries of extra help, gratuities to persons moving cans or other "stuff" from the apartment buildings, etc. [R. 480-482, 419-420.] These funds were lost or dissipated but were simply left in the buildings and became the property of Mrs. Tidwell when she took over their control and possession as of 5:00 P.M. on Sunday, February 28, 1954. [R. 420-421.] The Receiver did not take possession of these funds for the good and sufficient reason that they were a part of the working properties of the buildings [R. 420-421] and were therefore necessary to their continued operation. In regard the Trial Court declared in substance in its memorandum to counsel, dated October 5, 1954, that the cash fund existed merely "as an operating incident of the apartment house so that the resident managers would have available small sums of money for the purposes that are common to the day-to-day business transacted by resident apartment house managers." [R. 182, 185-186, 188.]

Second, with respect to the rents collected by the managers on Friday, Saturday and Sunday, the 26th, 27th and 28th of February 1954, they amounted to \$1,290 [R. 601.] Hallberg did not collect these monies from the managers for two cogent reasons: (1) the period in question being a week end, the banks were closed, and inasmuch as the Receiver's office had no safe there,

was prevented from collecting them by reason of the fact that Mr. Udall, Mrs. Tidwell's agent, made the rounds of the apartment houses on Sunday, February 22, 1954, told the managers that he was in charge, and collected the monies himself. [R. 932-933, 420, 429-430.] In connection it appeared that these monies represented payments made by tenants in advance on account of their rent due on the first of March [R. 182-183], wherefore the funds rightfully belonged to Mrs. Tidwell under the terms of the aforesaid order of February 26, 1954.

Third, with respect to the payment by Hallberg on February 27, 1954, of an installment on a trust deed not until two days later [R. 423], it should be observed that under the language of the Court's order of February 26, 1954, the Receiver's "active duties of management, control and possession of the assets known as the Richman Trust" continued until 5:00 of the afternoon of February 28. [R. 56.] Thus, at the time he made the payment on February 27, he had ample power to do so. Moreover, the Trial Court was of the opinion that it was not unwise of him to pay a debt of the receiver two days in advance of its due date. [R. 186, 868-869.]

It is significant to note that during his term as Receiver of the Trust Richman himself sometimes made payments on the same trust deed in advance of their due date. [R. 535-536.]

In conclusion, it should be noted that not one penny of any of the three items discussed above was lost or misappropriated. Thus, even if it be assumed for purposes of argument that the Receiver did not have authority to

As previously stated, the Receiver always employed a full-time bookkeeper during his term as Receiver. [R. 270.] For about two-thirds of that term the bookkeeper, Mr. Harrison, was the same bookkeeper who had kept the Trust books while Richman was managing the assets. [R. 270, 410-411, 533.] Hence, insofar as bookkeeping problems were concerned, the Receiver's duties were mainly supervisory.

Hallberg had had sufficient accounting training and experience to render him capable of exercising such supervision. In his college days at Northwestern University he took two years of accounting and did part-time bookkeeping work while going to school. [R. 911-912.] He had two years public accounting in the field in Chicago [R. 737.] He had the "complete management" of the books to 50 buildings in receivership in Chicago in 1930-1931 [R. 377-378, 381-383, 884-886], which presumably must have included supervision of their books of account. He also did some of the bookkeeping for Morgan Construction Tooth Corporation in 1951 [R. 448-449, 878], and apparently he set up the books for Hall Industries [R. 879-881.] with whom he was associated from October 1948 to April 1951. [R. 879-881.]

Insofar as Richman may be attempting to discredit the Receiver and his counsel for not having filed an account within 60 days after the Receiver's appointment, as required by Rule 18(b), Local Rules Southern District, California (Richman's Op. Br. p. 33), the Trial Court completely absolved Hallberg and Whyte from any blame.

F. Refrigeration Breakdown.

hman's partially unsupported and much distorted ment of the case, under this subdivision seeks to show Hallberg was remiss in the performance of his duties Receiver with respect to this refrigeration problem. Only necessary to exhibit the facts in their proper ective in order to refute any such charge against erg.

out the middle of January 1954, trouble developed the refrigeration equipment at the Western Arms ment building. [R. 284.] In accordance with in- tions previously given her by the Receiver, the man- called representatives of the California Refrigera- Company who went to work on the matter promptly. 284.] A report of the trouble was made to the ver on the evening of the same day, and he was hat the refrigeration repairmen were on the job. 285.] Before noon of the following day the Receiver conversations with the representatives of two re- ration companies and instructed one of these com- s to finish the job of repair. [R. 286, 435-439.] Receiver personally visited the apartment house two after the breakdown and found the refrigeration n working perfectly. [R. 435-436, 525.]

G. Air Pollution—Criminal Citation.

re, again, it is only necessary to state the facts and accurately in order to demonstrate that the ver and his attorney acted properly and prudently ndling an air pollution problem resulting from a

About December 3, 1953, Richman turned over to Receiver certain contracts which he had made with Pollution Control, Inc. for the installation of air pollution control equipment in the incinerators at the Oliver Cromwell and Canterbury apartment houses. [R. 387.] At December 10, the Receiver received an authorization from the County of Los Angeles for the installation of the equipment [R. 387-388], and not long afterward received engineering drawings of the equipment to be installed by Air Pollution Control, Inc. [R. 388.]

On December 24, 1953, the Receiver asked his attorney to examine these contracts. [R. 940, 388.] The attorney did so and returned them to the Receiver about December 30, at the same time orally advising the Receiver that "the contracts were valid and binding, that they should be carried out." [R. 556-557, 388-389, 753, 941.]

About January 1, 1954, the Receiver instructed his bookkeeper, Harrison, to mail the engineering drawings to Air Pollution Control, Inc., which Harrison was to do. [R. 753, 405-406, 518-519.] Subsequently, on January 13, the Receiver received a notice from the Los Angeles County Air Pollution Control District charging that the Oliver Cromwell was violating Section 242 of the California Health and Safety Code by discharging excessive smoke from its incinerator. [R. 711, 388-389.] Shortly after receipt of this notice Harrison telephoned Mr. Manalis, the vice-president of Air Pollution Control, Inc., and instructed his company to proceed with the installation at the Oliver Cromwell. [R. 646, 519-520.] With regard to the notice from the Air Pollution Control District, Manalis told Harrison that he "would take

January 22, 1954, Hallberg found the drawings for pollution control equipment at his office at the Cromwell [R. 642], Harrison having failed to follow the instructions given him about the first of the month to forward them to Air Pollution Control, Inc. [R. 53, 405-406, 518-519]. Hallberg immediately wrote a letter to Air Pollution Control, Inc. enclosing the drawings [R. 646-647.]

On January 27 or January 29, 1954 (the record is clear), a criminal complaint was issued by the City of Los Angeles naming Richman and one of the apartment house managers as defendants. [R. 406-407.] By event the record is clear that Whyte had no knowledge that Richman had been named as a defendant in the complaint until January 29, when he was so advised by his son. [R. 558, 639-641, 940.] Whyte immediately went to get in touch with Richman and his counsel but was unable to locate either of them, whereupon he left a message at Richman's office between 4:00 and 5:00 p.m. on January 29, concerning the pendency of the case and the fact that a hearing therein had been set for the morning of February 1. [R. 407.] Mr. Joseph Wright, representing ~~Richman, and Whyte representing the Rich-~~ ^{Richman, and Whyte representing the Rich-} ~~man and~~ ^{g. the} apartment house manager, appeared at the hearing and upon their joint request the matter was continued. [R. 960-961.] Thereafter, at a conference on February 9, 1954, the representative of the Los Angeles City Attorney's Office in charge of the case, Hallberg, Whyte and Richman's counsel persuaded him to dismiss the suit. [R. 965-966.] At no time was anyone fined or was any financial

A final key fact, which is vital to any fair statement of the facts under this heading and which does not appear in Richman's brief, is the admission by Mr. Manal Air Pollution Control, Inc. that for a period commencing from ten days to two weeks before January 15, 1954 continuing until three or four weeks after January 15, 1954, a particular type of metal needed for the installation of the air pollution control equipment at the Oliver C. well and the Canterbury was not available to his company wherefore the company was unable to make the installation during this period in the absence of such metal. [704-707, 709, 547-549.] Hence, even if it be assumed that Hallberg and/or Whyte failed to act as reasonably prudent men in dealing with the matter under consideration (an assumption which, as we have seen, is not supported by the facts), any failure on their part to conform to the standards of due care was not the proximate cause of the issuance of the criminal complaint for the reason that even if they had they acted with all possible skill and dispatch, the installation still could not have been completed before the complaint was issued because Air Pollution Control, Inc. did not have the necessary material to make the installation.

H. Receiver's Fees.

At the beginning of this subdivision of his statement in the case Richman devotes several pages of his brief to an effort to make capital of the fact that the Receiver did not specify in his petition for fees the amount of the fee he was asking for, as required by Rule 18(c), Federal Rules Southern District, California. (Richman's O

petitions for fees that "if they wanted to leave the court to determine a reasonable amount that court would not insist upon compliance with the that an amount shall be prayed for. But they could it as reasonable or they would state a specified t." [R. 254.] The District Court further asserted I felt at the time . . . that asking for rea- e fees and leaving it to the court to determine what should be upon hearing the evidence was the better e." [R. 625.]

re is abundant evidence in the record to sustain the Court's finding that the reasonable value of the er's services is the sum of \$6,000. [R. 194.] In onnection the court heard the testimony of Mr. on Mann, a licensed real estate broker and real appraiser, who for 21 years was connected with Rowan & Co. in Los Angeles, the second largest tate management firm in the West. [R. 298-299.] first being qualified as an expert witness with t to the management of real estate, including apart- buildings, and the compensation paid for such man- nt in the Los Angeles area [R. 298-299, 308-310], testified that based on the size of the receivership (it was valued at approximately \$1,200,000) [R. the duties performed by the Receiver, his education ast employment, the size of his bond (\$75,000) -26], and the amount of gross receipts during the of the receivership (\$94,153.59) [R. 105], he was opinion that the reasonable value of the Receiver's s was 5% of gross income, or \$4,707.67. [R.

In explaining why it fixed the Receiver's fee at \$ the Trial Court stated:

"The Receiver has not prayed for a specific in compensation for his services but has set forth in detail what his services consisted of and prayed for reasonable fees. The Court bears in mind that the defendant has testified that ten per cent of the income was a reasonable management fee when the defendant rendered the management service. In procuring the contract with Plaintiff for that fee, there was an over-reaching and undue influence. That was excessive. The Court bears in mind, also, that there is evidence in the record that various percentages including five per cent and six per cent would be a reasonable management fee. The Receiver in this instance acted as a property manager with the obligations of full trustee and of an officer of the trust. Mr. Richman, with whom he had to deal, is a person given to hostile and aggressive attitudes. It is evident that he exercised these in his relations with the Receiver. The Receiver was obliged to go through the problem of setting up his own management plan. [234] He was only allowed to execute the plan for a brief period before the receiver's term was abruptly terminated. He was placed in a session hurriedly and he was terminated abruptly. It then became necessary for him to file an accounting, and the accounting procedure was exhausted to its ultimate in searching into the conduct of the Receiver during and even before his stewardship. He spent several days in Court defending the administration of his trust and undergoing a most cruel and insulting scrutiny of his every act and omission in his administration. The Receiver's fee is

and the labors of making up his accounting and explaining and defending it in Court. The Court finds it to be a true and correct account." [R. 186-188.]

As to the manner in which the Receiver was treated by Richman and his counsel, the Court remarked:

"The Court: . . .

"He was brought before the court almost as if he were accused of a crime here and was treated by some of the parties to the suit, or by one of the parties to the suit and one of the attorneys to the detriment with less respect than I have seen embezzlers treated when I was handling the criminal calendar of the court." [R. 857-859.]

On pages 41-42 of his opening brief Richman attempts to compare the total amount of expenses incident to the administration of the receivership, including fees allowed the Receiver and his attorney, with the amount which would have been paid to him under his contract with the Trust had he been managing the assets during the period of receivership. He concludes that the receivership expenses were about \$400 more than they would have been had he remained in control. Apparently the purpose of this comparison is to show, if he can, that the fees of the Receiver and his attorney are too high.

Completely apart from the fact that several of the figures which he bases his calculations are not supported by the record,⁶ and the further fact that he fails to mention certain items which would have increased the Trust

of the receivership [R. 605-606], his comparison is leading and of little value. This is true because Receiver's duties were much more burdensome than would have been had he, like Richman, been in control of the assets for an extended period and thus had had to put the Trust affairs on a normal well-oiled day-to-day basis. Here, however, the Receiver was confronted with the task of taking possession of unknown properties, familiarizing himself with them, installing his system of management and setting up his books, and then, only a few months later, being compelled to close the books and to render possession of the assets.

I. Objections to Receiver's Report.

We have already discussed all of the items mentioned in this subdivision of Richman's statement of the Trust under previous headings, except (1) the failure to pay Richman's claim in the sum of \$3,104.22, and (2) the alleged failure by the Receiver to account for a \$1,000 deposit on Workmen's Compensation and an \$158 refund thereon of \$158. (Richman's Op. Br. p. 44)

With respect to (1) above, although Richman claimed that he was entitled to a management fee of \$3,104.33 for his services to the Trust in November 1953, Hallberg never received a bill or other communication from him stating that this amount, or any other amount, was due him. [R. 426-427.] Actually it would have been most unwise for the Receiver to have paid the claim inasmuch as the District Court later held that the amount claimed was based on a charge of 10% of the income of the Trust as fixed by a contract under

ment on a *quantum meruit* basis only. [R. 182-
The Court ultimately fixed Richman's management
such service at \$1,862.60, or 6% of the gross
of the Trust in November, 1953. [R. 194-195.]
respect to (2) above, the Receiver did account
the \$400.00 deposit on Workmen's Compensation.
7.]⁷ As for the Receiver's alleged failure to ac-
for a refund on this deposit, he could not have
because no refund was shown to have been re-
by him during his term as Receiver. [R. 661-662;
9.]⁸

J. Attorney's Fees.

ingly enough, this subdivision of Richman's state-
of the case does not challenge as unreasonable the
\$1,800.00 actually allowed the Receiver's attorney
stead attacks the amount prayed for in the attorney's
for fees, namely, \$3,000.00 for ordinary services
unspecified amount for extraordinary services, as
excessive. (Richman's Op. Br. pp. 44-46.) That
of \$1,800.00 which was in fact allowed is an ex-
ly modest fee is shown by the following facts:

attorney's original petition for fees, filed March 18,
ought an allowance of fees for services performed
on behalf of the Receiver from about December
3, to and including March 17, 1954. [R. 58, 74.]
services rendered during this period consisted, among

statement at page 44 of Richman's opening brief that the

others, in advising the Receiver or his agents, on an average of at least three days a week during the three month's period of the receivership, with respect to numerous problems connected with the administration of the receivership; preparing petitions, such as a petition for authority to pay Christmas bonuses and a petition for authority to renovate individual apartments; court appearances in obtaining approval of such petitions; frequent telephone calls from and to the attorneys for Richman and Tidwell regarding the progress of the receivership and problems incident therein; conferences and a court appearance in connection with the dismissal of the criminal complaint hereinbefore discussed under subdivision (b); conferences regarding termination of the receivership and preparation of the Receiver's first and final report and petition for fees. [R. 60-72, 541-542, 951-952.] Whyte had practiced law in Los Angeles for more than 12 years prior to his appointment as attorney for the Receiver. [R. 967-968.]

On May 12, 1954, Whyte filed his supplemental report and petition for fees for the period commencing March 18, 1954, to and including May 10, 1954. [R. 164-170.] The services included, among others, representing the Receiver upon the taking of his deposition and conferring with Richman and his wife and with other potential witnesses in preparing his defense to Richman's attack upon his report and petition for fees. [R. 166-169.]

As previously noted, the hearing on the Receiver's report and petition for fees began on May 12, 1954, and lasted for four and one-half court days, excluding the recesses. [R. 246, 265, 340, 341, 416, 417, 432, 433.]

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R. 614-629] when the subject of Whyte's fees was consideration, the hearing was devoted exclusively to defending the Receiver against the attack on his report and petition for fees and to laying a foundation for determining the reasonable value of his services. Whyte was the Receiver's attorney throughout the hearing.

Bert F. Laugharn, Esq., a Los Angeles attorney specializing in bankruptcy and liquidation matters, was called as an expert witness with regard to receiverships. [R. 559-561.] Upon the basis of the allegations in Whyte's original and supplemental petition for fees, and in view of the size and extent of the receivership estate, and the problems encountered during receivership, Laugharn expressed the opinion that compensation of \$1,000.00 per month for each of the months of the receivership would not be excessive. [R. 561-565, 568.]

In reference to the compensation due Whyte for defending the Receiver in court against Richman's attack on the Receiver's report and petition for fees,^{8a} Paul Fusco, one of the senior partners in the Los Angeles law firm Melveny & Myers, was qualified as an expert witness [R. 614-616] and testified that based upon the size of the receivership estate, the objections made by Richman to the Receiver's report and petition for fees, and the time consumed by Whyte in defending such report and petition for fees against Richman's attack thereon, he was of the opinion that the reasonable value of Whyte's services in conducting the defense was between \$1,000.00 and \$2,000.00. [R. 616-619.]

Whyte is criticized at pages 44-45 of Richman's ing brief for having allegedly given improper advice to the Receiver, three asserted instances of such all improper advice being specified, to wit:

(1) He and the Receiver took over the Trust's account and requested managers to turn over mon them, and in fact collected money from one of the agers, before the Receiver was appointed.

(2) Whyte failed to advise the Receiver that performance of the contracts with Air Pollution Co Inc. might result in criminal prosecution.

(3) He allegedly erroneously assumed that Ri had no right to contact the Receiver's bookkeeper Harrison, concerning the Trust property or the a the Receiver.

These points will be answered briefly and in their order.

As to (1), the Receiver was appointed by a court made and filed on November 30, 1953. [R. 2 The steps allegedly taken by the Receiver and his at were taken on December 1, 1953, after the Rec appointment. [R. 552, 947-948.] The only action at the bank was to transfer the former Richman account to the Receiver's name. [R. 552.] This v urgent matter. [R. 554-555.]

It is true that the Receiver did not file his bond and his oath of office until December 2. [R. 25-26.] nically, therefore, the Receiver and his attorney h authority to take any of the steps which they did t December 1. Richman does not contend, however,

such petty fault finding does anything more than
the time of this Court.

to (2), why should Whyte have advised the Re-
that non-performance of the contracts with Air
on Control, Inc. might result in criminal prosecu-
About December 30, 1953, he told the Receiver
the contracts were binding and instructed him to
them out, "to go ahead." [R. 388, 556-557, 753.]
no reason to believe that his instructions would
or were not being, obeyed. He was not informed
time that performance of the contracts for installa-
the pollution control facilities was being held up
the month of January, 1954. [R. 943.] Neither
advised that the Receiver had received the notice
by the Air Pollution Control District on January
54. [R. 543-544.] The first time he knew or
ably could have suspected that anything was wrong
or about January 27, when he learned from Har-
that a criminal complaint either was or was about to
be filed. [R. 557-558.]

lly, as to (3), what difference does it make whether
assumed, either rightly or wrongly, that Richman
right to contact Harrison, the Receiver's book-
? It is not contended that Whyte ever took any
in reliance upon his assumption or that Richman
prevented from obtaining the information he de-

ally Whyte had every reason to assume as he did. The
order appointing the Receiver expressly forbade Richman

The Issues Presented.

The principal issue presented on this appeal with
ence to the Receiver and his attorney is as follows

Did the District Court abuse its discretion in awarding
a fee of \$6,000.00 to the Receiver and a fee of \$1,800.00
to his attorney?

There are two other minor issues, to wit:

(1) Did the District Court err in ordering the Receiver
to reimburse himself from the moneys in his possession to the
extent of \$89.20, paid out by him for copies of his deposition
and that of his attorney, said depositions having been taken by Richman
used at the hearing on the Receiver's report and petition for fees
and the petition of his attorney for fees?

(2) Did the District Court err in refusing to
qualify itself to settle the Receiver's account and to
award fees to the Receiver and his attorney?

Summary of Argument.

1. The District Court did not abuse its discretion in
awarding a fee of \$6,000.00 to the Receiver and a fee of
\$1,800.00 to his attorney.

2. The District Court did not err in ordering the Receiver
to reimburse himself from the moneys in his possession to the
extent of \$89.20, paid out by him for copies of his deposition
and that of his attorney.

3. The District Court did not err in refusing to
qualify itself to settle the Receiver's account and to award
fees to the Receiver and his attorney.

ARGUMENT.

I.

District Court Did Not Abuse Its Discretion in awarding a Fee of \$6,000.00 to the Receiver and Fee of ~~\$18,000.00~~^{18,000.00} to His Attorney.

It is axiomatic that the amount of compensation awarded to a receiver and his counsel is a matter within the sound discretion of the trial court and will not be disturbed upon appeal in the absence of a clear showing that the trial court has abused its discretion. (*In re Cash-orth, Grow-Sir* (2d Cir., 1913), 210 Fed. 24, 26; *Gold & Exploration Corporation, et al. v. Webster* (2d Cir., 1934), 69 F. 2d 416, 418; *Venza v. Venza*, 101 Cal. App. 2d 678, 680.) This principle is well established in the case of *Venza v. Venza* (*supra*), to wit:

"The rule is well established that the compensation to be allowed receivers and their attorneys is primarily within the sound discretion of the trial court. This is necessarily so, for, as the court stated in *Kan v. Kan*, 90 Cal. App. 2d 538 [203 P. 2d 86], the trial court is 'in a better position to know the necessity for the services performed by the receiver and his attorney and to assess their reasonable value' (p. 541) than is a reviewing court. Thus, it follows that in the absence of a clear showing of an abuse of discretion by the trial court this court would not be justified in interfering therewith. (*Adams v. Woods*, 101 Cal. 306, 322.) We conclude that the record does not disclose such a showing by defendants." (P. 30.)

amount allowed. (*Estate of McLaughlin* (1954), 42d 462, 465-466 (trustees' fees); *Estate of* (1950), 97 Cal. App. 2d 651, 655 (trustee's fees *Dehner's Estate* (1941), 230 Iowa 490, 298 N. W. 657 (attorney's fees).) This rule is well expressed in *Estate of McLaughlin* (*supra*), a recent decision of the Supreme Court of California, stated in the following language:

“Pursuant to section 1122 of the Probate Code, the trustees must be allowed ‘such compensation for services as the court may deem just and reasonable.’ The allowance rests in the sound discretion of the trial court, whose ruling will not be disturbed on appeal in the absence of a manifest showing of error. (*Estate of McLellan*, 8 Cal. 2d 49, 55 [63 P. 2d 1120]; *Estate of Mills*, 119 Cal. App. 2d 8, 9 [226 P. 2d 1028]; *Estate of Willardson*, 101 Cal. App. 2d 777, 780 [226 P. 2d 369].) The trustee must present to the trial court satisfactory evidence of the accuracy and propriety of the items in his account (*Johnson v. Johnson*, 174 Cal. 521, 527 [163 P. 893]; *Estate of McCabe*, 98 Cal. App. 2d 503, 505 [220 P. 2d 614]); but the sole question before an appellate court when the fee allowed him is attacked as excessive is whether there is substantial evidence to support the trial court’s finding. (*Estate of Griffith*, 97 Cal. App. 2d 651, 655 [218 P. 2d 149].) A finding that such a fee is a reasonable one states the ultimate issue in issue and is formally sufficient. (*Estate of*

*“ ‘On the settlement of each such account the court shall allow the trustee his proper expenses and such compensation for services as the court may deem just and reasonable. Where the

Cal. 2d 512, 514 [116 P. 2d 438]; *cf.*, *Estate of Willardson*, *supra*, 101 Cal. App. 2d at 780; *Estate Scherer*, 58 Cal. App. 2d 133, 138-139 [136 P. 103].)" (Pp. 465-466.)

order of November 19, 1954, from which Rich-appeal herein is taken, the District Court made the following findings with reference to the reasonableness of the fees allowed the Receiver and his attorney:

"... the reasonable value of the services of Roy E. Hallberg as receiver is the sum of \$6,000.00, which the Court finds to be the reasonable value of said services, and his fees are hereby fixed at the sum of \$6,000.00; the reasonable value of the services of John Whyte, as attorney for the receiver in this matter, is the sum of \$1,800.00, and his fees are hereby fixed at the sum of \$1,800.00, which the Court finds to be the reasonable value thereof." [R. 194.]

There is ample evidence to support the trial court's finding that the reasonable value of the Receiver's services was \$6,000.00. Gross receipts collected by the Receiver during the three months period of the receivership amounted to \$94,153.59. [R. 105.] There was evidence on record that various percentages, including 5% and 6% of gross income, would be a reasonable management fee. [R. 187, 374, 316.] Although 6% of \$94,153.59 would be \$5,649.21, and 5% of \$94,153.59 would be \$4,707.67, there were other factors present which justified the Court in raising the fee to \$6,000.00, which amounts to roughly 6.3% of gross income.

At the first place, the receivership lasted only three

system of management and bookkeeping before the receivership was terminated and he was forced to surrender possession of the assets and account for his stewardship. Naturally, this state of affairs placed a far greater burden upon him than would have resulted had he been given more time in which to put his house in order. [R. 186.]

In the second place, the Receiver was compelled to spend four and one-half days in court defending his administration of the receivership against a violent attack thereon by Richman, an attack which the District Court found to be completely unjustified. The Receiver was obliged to devote considerable time out of court preparing his defense to the attack on his administration and to the taking of his deposition by Richman. [R. 169.]

In the third place, in the words of the trial court, the Receiver was treated by Richman and his counsel with less respect than I have seen embezzlers treated who were handling the criminal calendar of the court" [R. 859], and was subjected to "a most critical and intense scrutiny of his every act and omission in his administration." [R. 187.] The Receiver is certainly entitled to some additional compensation for being forced to submit to such indignity and abuse.

There is likewise ample evidence to support the court's finding that the reasonable value of the attorney's services is at least \$1,800.00. Hubert Laugharn, a well-known Los Angeles attorney with wide experience in the field of receivers and receiverships [R. 559-561], testified that compensation of \$1,000.00 a month to the Receiver

that in his opinion the reasonable value of the attorney's further services in defending the Receiver against the Receiver's attack on his report and petition for fees alone was worth from \$1,000.00 to \$1,200.00. [R. 616-619.] In connection it has been held that a trial court has the authority to compensate a receiver's attorney for services rendered by him in defending his client against baseless claims of having failed in the proper performance of his duties as receiver. (*Missouri & K. I. Ry. Co. v. Edson*, 224 Fed. 79, 1915).

Even if the District Court had failed to make any finding with respect to the reasonableness of the amounts allowed as fees to the Receiver and his attorney, it is obvious that it was in a better position to assess the reasonable value of their services than is this Court, and unless the Court can say that the compensation allowed is not supported by the evidence, it should affirm the award. (*Y. Tsang* (1949), 90 Cal. App. 2d 538, 541.)

My comments are in order respecting the cases cited by the Defendant Richman at pages 59-62 of his opening brief. I have no quarrel with the statement of the considerations which should govern a court of equity in fixing the compensation of receivers, as they are set out on page 59 of Richman's opening brief in a quotation from the case *Eames v. H. B. Claffin Co.* (2d Cir., 1916), 231 Fed. 93. Richman's brief, however, omits a portion of the language quoted from this case, which reads as follows:

"* * * The amount of a receiver's compensation

In *Cake v. Mohun* (1896), 164 U. S. 311, 41 L. 447, cited at pages 60-61 of Richman's opening brief in the appellate court, while recognizing that it would have been more proper to consider the receiver's compensation at a considerably less amount had the matter been presented to it originally, refused to tamper with the amount fixed by the trial court upon the ground that "Great consideration will be paid to the conflicting views of the auditor or master and the [lower] courts respecting a mere matter of amount." (P. 311.)

As for the case of *Walton N. Moore Dry Goods Co. v. Lieurance* (9th Cir.), 38 F. 2d 186, cited at page 61 of Richman's opening brief for the proposition that the receiver's prior earnings are relevant in determining his fees, we have no quarrel with this proposition either. We do desire, however, again to call attention to the fact that for three or four years prior to January, 1947, the receiver received a net salary, before taxes, of \$40,000 a year [R. 891-892, 367-368], and that from October, 1948, to April, 1951, he received a salary of \$20,000 per year from another employer. [R. 879-881.]

II.

The District Court Did Not Err in Ordering the Receiver to Reimburse Himself From the Money in His Possession to the Extent of \$89.20, and to Pay Out of Him for Copies of His Depositions and That of His Attorney.

The depositions of the Receiver and his attorney were taken by Richman for use upon the hearing on the receiver's report and petition for fees and his counsel's petition for fees. [R. 238.] They were introduced

States or in the Federal Rules of Civil Procedure costs shall be allowed as of course to the prevailing party unless the court otherwise directs, . . .” The Receiver and his attorney were prevailing parties and the Receiver was a losing party in that the District Court in its Report and the Receiver’s report “to be full and correct” [R. 109] and awarding fees to the Receiver and his counsel. It is well settled that the cost to the prevailing party of obtaining a copy of his deposition taken by the losing party is taxable against the losing party. (*Schmitt v. Central-Diamond Fibre Co.* (N. D., Ill., 1940), 140 F.2d 109.)

III.

District Court Did Not Err in Refusing to Disqualify Itself to Settle the Receiver’s Account and to Award Fees to the Receiver and His Attorney.

Argument on this point has already been sufficiently covered under subdivision B of our statement of the facts appearing at pages 11 to 12 hereof.

It is respectfully urged that the order appealed from should be affirmed.

Respectfully submitted,

JOHN WHYTE,

*Attorney for Appellee Roy E. Hallberg, as
Receiver.*

JOHN WHYTE,

In Propria Persona.

IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

FREDERICK I. RICHMAN,

Appellant and Cross-Appellee,

vs.

LYDA TIDWELL,

Appellee and Cross-Appellant,

E. HALLBERG, as Receiver, and FITZPATRICK &
W. H. WYTE and JOHN WHYTE, attorneys for the Receiver,
Appellees.

Validated Brief of Lyda Tidwell as Cross-Appellant
and as Appellee, in Answer to Opening Brief of
Appellant Frederick I. Richman.

WILLIAM N. HAHN & CAMUSI,

West Sixth Street,
Los Angeles 14, California,

Attorneys for Appellee and Cross-
Appellant, Lyda Tidwell.

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No. 14702

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

FREDERICK I. RICHMAN,

Appellant and Cross-Appellee,

vs.

LYDA TIDWELL,

Appellee and Cross-Appellant,

E. HALLBERG, as Receiver, and FITZPATRICK &
JOHN WHYTE and JOHN WHYTE, attorneys for the Receiver,
Appellees.

Validated Brief of Lyda Tidwell as Cross-Appellant
and as Appellee, in Answer to Opening Brief of
Appellant Frederick I. Richman.

Preliminary Comment.

It should be noted that since Lyda Tidwell, plaintiff
in the court below, appealed only from a relatively small
portion of the court's order [see Notice of Appeal, R. 197,
Lyda Tidwell's Statement of Points, R. 972], it was
thought that it would be practical for Lyda Tidwell, as

An order permitting this consolidation was obtained from the United States Court of Appeals for the First Circuit, based upon the Stipulation of the parties.

Therefore, Lyda Tidwell's Brief is divided into two portions, the first portion constituting her opening brief as Cross-Appellant, and the second portion, her reply brief as respondent.

In view of the fact that there are two separate appeals filed, cross-appellant and respondent, Lyda Tidwell, for convenience, be generally referred to by her name solely, and appellant and cross-respondent, Frederick Richman, will be, for convenience, referred to by his name solely.

—3—

OPENING BRIEF OF CROSS-APPELLANT,
LYDA TIDWELL.

Pleadings and Jurisdiction.

This case originally arose out of an action brought by Lyda Tidwell, as plaintiff, against her brother, Frederick I. Richman, and others, as defendants, in the United States District Court for the Southern District of California. Plaintiff, Lyda Tidwell, brought suit seeking the dissolution and avoidance of a Declaration of an *inter vivos* Trust, and for a distribution of the assets of the trust to the trustors, consisting of herself and her brother, Frederick I. Richman. Each was the beneficial owner of one-half the assets of said trust. She claimed that the trust was voidable because of undue influence and fraud in the inception of the trust and sought damages for fraudulent and improper management, and further asked for the removal of Frederick I. Richman as trustee of the trust. Defendant, Frederick I. Richman, answered, denying the allegations of undue influence and fraud in the inception of the trust and further denied the allegations of fraudulent and improper management. [Memorandum of Decision, R. 3-20.]

Jurisdiction is based on the fact that plaintiff, Lyda Tidwell, is a resident of the State of New Mexico, while defendant, Frederick I. Richman, and the remaining defendants are residents of the State of California, and

Jurisdiction is conferred under the provisions of section 1291 of the Judicial Code as amended (28 U. S. C. 1291).

Statement of the Case.

The trial court determined that the issues of fraud and undue influence in the inception of the trust would be tried first and separately from the other remaining issues under the provisions of section 42(b) of the Rules of Civil Procedure for the District Courts of the United States. [R. 3-4.] After an extended and bitterly contested trial, which lasted in excess of nineteen (19) days [R. 5], the trial court filed its Memorandum of Decision on November 30, 1953 [R. 3-20], in favor of Lydia Tidwell voiding and cancelling the trust and all other questions and matters were expressly reserved for further proceedings. [R. 17.]

On the same day, November 30, 1953, the trial court signed and filed its order appointing Roy E. Hallberg Receiver, "In the best interests of all the parties and for the protection and preservation of the assets of the former Richman Trust" [R. 21-24], said receiver being expressly ordered to take possession forthwith of the said assets and manage and operate the same, and that the said receiver should not pay any income to either plaintiff or defendant Richman without specific order of court. The principal assets consisted of the five apartment houses mentioned in the court's order. [R. 22.]

Judgment was entered January 22, 1954, in favor of Lydia Tidwell voiding the trust, and in conformance

the receiver operated the former trust properties for a period of three months, from December 1, 1953, to February 8, 1954, at which time plaintiff, Lyda Tidwell, and defendant Richman reached a final settlement disposing of all outstanding issues. Said settlement arose by virtue of a letter dated February 19, 1954, in which defendant offered to sell to plaintiff his undivided one-half interest in the former trust for the sum of \$600,000.00; that plaintiff, Lyda Tidwell, as the buyer, would assume possession of said assets on February 28, 1954, and after payment of all provisions being made for the payment of the receiver's operating obligations and expenses and fees, the balance remaining under the control of court would be divided equally between the parties. [R. 139-142.] Plaintiff, Lyda Tidwell, unconditionally accepted said offer by letter dated February 25, 1954, and assumed possession of the assets on February 28, 1954. [R. 143-144.]

The Receiver filed his First and Final Report and Petition for Allowance of Fee to Receiver, on March 18, 1954 [R. 75-121], and on the same day, Fitzpatrick & Whyte, John Whyte, attorneys for the receiver, filed their Petition for Allowance of Fees to Attorneys for Receiver. [R. 68-74.] Said receiver's First and Final Account recited that he had on hand, after the payment of all obligations except his fees and those of his attorneys, the sum of \$20,697.71. [R. 119.] On April 6, 1954, defendant Frederick I. Richman, filed his Objections and Answer to report and petition of receiver and his attorney fees [R. 125-144], in which certain objections were

not object to the accuracy of the receiver's report, merely pointed out that the trial court would be involved in a division of funds between Lyda Tidwell and Frederick I. Richman, in accordance with the letter agreement of the parties. [R. 145-152.] Lyda Tidwell then, on April 12, 1954, her Reply to Objections of Defendant Frederick I. Richman [R. 152-156], together with papers and authorities in support thereof. [R. 152-156.]

The said petition of the Receiver and his attorneys states that the objections of Tidwell and Richman are the plea that the receiver is not entitled to the fees claimed, pertaining to the present conflict between the receiver and his attorney on the one hand, and Frederick I. Richman on the other, and also to the conflict between Lyda Tidwell and Frederick I. Richman as to the division of the fund remaining after payment therefrom of the fees claimed by the receiver and his attorneys. Lyda Tidwell has not objected to the accuracy of the receiver's report, nor to the award of reasonable fees to the receiver and his attorney, nor has she asked that the receiver be surcharged since the receiver did no wrong, and the balance remaining in his hands is sufficient to settle in full all remaining disputes between Tidwell and Richman as to credits and debits, which each claims against the other in the final settlement of their dispute and division of the funds.

The trial court held its hearing, first, on the Receiver's Account and Report and the issues of an award of reasonable fees for the receiver and his attorneys. On June 1, 1954, stipulations were entered into between Lyda Tidwell and Frederick I. Richman, which made a trial of

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an order under Local Rule 7 of the United States District Court for the Southern District of California, the rule permits the parties to submit computations on the court's decision prior to the court signing a order. Defendant Richman made no objection to the order proposed by Lyda Tidwell, but seeks relief, direct appeal, from the whole of said order finally entered and entered November 19, 1954. [R. 196.]

The defendant, Frederick I. Richman, having appealed from the whole of said order, plaintiff, Lyda Tidwell, appeals from that portion of the order relating to her disbursement with the defendant, and which portion of the Order is unfavorable to her insofar as final division of funds under the court's control is concerned. [R. 197.]

Defendant Richman appealed on December 15, 1954 [R. 196], and plaintiff, Lyda Tidwell, appealed on December 20, 1954.

Generally, defendant Richman claims that (1) the court should have disqualified itself from considering the issues presented here; (2) that, in any event, the court had no jurisdiction to settle title as between plaintiff and defendant to the funds under the court's control; (3) that the receiver and his attorney were paid excessive fees by the court; and (4) that, in dividing the fund between plaintiff and defendant: (a) the court should have given Richman a credit for interest rendered the trust in November, 1953, at the rate of 8% of the gross receipts for that month, rather than the *quantum meruit* rate of 6% allowed by the court;

Mrs. Tidwell, still the trial court erred in its computation (c) that the trial court erred in failing to credit Richman with one-half of the rents collected from the trust department houses for the 26th, 27th and 28th days of February, 1954, which funds were turned over to Mrs. Tidwell as the receiver; (d) that the trial court erred in failing to credit Mr. Richman with one-half of the amount of the cash fund which the receiver turned over to Mrs. Tidwell; that, although the receiver had not paid certain obligations incurred during his stewardship, which were later paid for by Mrs. Tidwell out of her own funds, nevertheless the court erred in allowing Mrs. Tidwell a credit for one-half of these obligations consisting of (e) the installation of catalytic units, (f) real property taxes for January and February, 1954, and (g) utility bills for February, 1954.

Plaintiff Tidwell on the other hand objected to (1) the award of agent's fees to Richman for the month of November, 1953, and (2) further claimed that in the settlement between Richman and Tidwell, the court should have allowed her a credit for Richman's escrow fees, Bureau of Internal Revenue stamps required to be placed on Richman's deed of conveyance to her of his one-half undivided interest in the real properties of the trust, since Mrs. Tidwell paid for those two items out of her own funds.

Specifications of Error.

Lyda Tidwell, as Cross-appellant, urges and relies on three specifications of error, as follows:

ber, 1953, in the sum of \$1,862.60 (one-half of which was charged to Lyda Tidwell) or in any sum thereafter.

(a) The court found that Richman was entitled to a reasonable fee for services rendered by him as agent of the dissolved trust for the month of November, 1953, which reasonable fee was found to be 6% of gross revenues or the sum of \$1,862.60, one-half of which was held to be the obligation of plaintiff, Lyda Tidwell. [R. 194-195.]

SPECIFICATION OF ERROR No. 2.

The trial court erred in failing to credit Lyda Tidwell with Richman's share of the balance of the funds for Richman's escrow fees on the sale of his one-half undivided interest of the trust assets. Lyda Tidwell paid Richman's escrow fees in the sum of \$329.00. [R. 787-799A.] The trial court found that Lyda Tidwell was not entitled to any credits for expenses incurred by her in said escrow on behalf of Richman. [R. 195-196.]

SPECIFICATION OF ERROR No. 3.

The trial court erred in failing to credit Lyda Tidwell with Richman's share of the balance of the funds for Richman's costs for Bureau of Internal Revenue Stamps on his deed of conveyance of his one-half undivided interest in the former trust properties. Lyda Tidwell paid a sum of \$577.50 for the said Internal Revenue stamps from her own funds. [R. 799A.] The trial court found that Lyda Tidwell was not entitled to any credits for

Specification of Error No. 1.

Richman Not Entitled to Credit for Any Services Rendered
the Trust.

Lyda Tidwell assigns error to the trial court's granting a credit to Frederick I. Richman in the sum of \$1,800 out of the balance of the fund for services rendered to the trust as agent therefor for the month of November, 1953.

In his brief at page 67, Richman even claims that he is entitled to his full agent's fee of ten per cent (10%) for the operation of the trust in November, 1953. The trial court did, in fact, give him credit for one-half of a reasonable fee, which the trial court set at six per cent (6%) [R. 194-195.]

Mrs. Tidwell strongly urges that Mr. Richman was not entitled to any credit for fees.

Before arguing the respective alleged specifications of error, a brief review of the pertinent evidence may clarify these issues:

The parties had reached a binding agreement by the unqualified acceptance letter of Tidwell and her attorney dated February 25, 1954. [R. 143.]

The pertinent provisions of the offer letter of February 19, 1954, written by Richman's attorneys and approved by him in writing at the bottom thereof [R. 139-142] are as follows:

(1) Mutual releases by each party to the other from the beginning of time to the present.

(2) Both parties to "bear their own expenses."

(4) "A stipulation shall be entered into that the receiver be relieved as of five o'clock p. m. February 8, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on . . ."

(5) "The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman."

(6) "Mrs. Tidwell shall have her election to either buy Mr. Richman's undivided half interest in the assets of Richman Trust, or to sell her undivided one-half interest in the assets of Richman Trust for the sum of \$600,000.00, payable on the following basis:

"(a) \$100,000.00 cash shall be paid on February 26, 1954 . . . to the other . . ."

"(b) \$500,000.00 shall be paid through escrow . . . on or before May 1, 1954."

(7) "All parties will execute whatever is necessary to carry out the terms of this arrangement."

Lyda Tidwell, having accepted the offer of Richman to buy his "undivided half interest in the assets of the Richman Trust," Lyda Tidwell paid Richman the \$100,000.00 cash and the parties went in to escrow and entered into an escrow agreement for the purpose of executing the contract of purchase. [Escrow Instructions, R. 799-800.]

It must be recalled that the court stated Richman "had been deceived, and by over-weaning and deceptive means, ob-

we realize that the 10% fee Richman seeks for the month of November, 1953, amounts to \$3,104.33, and when we further realize that it was not by any means a full-time job, as shown by the receiver's testimony and by Richman's testimony as to his law practice and many other interests. [R. 528, 713-715, 731-732.] The court awarded the receiver a fee of 6% of the gross income for the period of the receivership [R. 183], and Richman has charged that the same is excessive and an abuse of discretion, although apparently the receiver did his job well or better than Richman. The court states that a (10) percent is an excessive fee [R. 187] and that a fee "would have been indicated." [R. 183.] The court then awards Richman a fee amounting to 6% of the gross revenues, or the sum of \$1,862.60, of which Mrs. Tidwell must pay one-half. [R. 194-195.]

The trial court correctly pointed out in its memorandum decision that the trust had been voided and therefore Richman was not entitled to the amount provided for in said Trust Agreement. [R. 183.] The judgment directing, in effect, course, void and set aside and cancel the trust [R. 41] and the court was perfectly correct in holding that it was not bound by the terms of the Trust in setting a fee for Mr. Richman. Satisfaction of judgment was entered in said case [R. 800], and the judgment voiding the trust therefore became final.

However, Mrs. Tidwell objects to the award of any fee to Mr. Richman for the month of November, 1953. It must be noted that the Trust began November 1, 1953, and that Richman, as agent, had received approximately \$1,000.00 for the month of November, 1953.

s in fees. These issues (other than fraud and undue influence in the execution of the trust) had not been tried when the court gave its judgment voiding the Trust. [3-4.] The judgment specifically reserved to Mrs. Tidwell the right to claim "such additional assets, if any, which plaintiff (Mrs. Tidwell) may be adjudged entitled to receive on an accounting; . . ." and the court reserved jurisdiction to make final disposition of "other issues still pending. . . ." [R. 43-44.]

Mrs. Tidwell had a legitimate claim for the surcharging of Mr. Richman with respect to excessive fees charged her in the past. But when the settlement was made, each party, as a term of the letter agreement, released the other from any and all claims from the beginning of time to the present. Also, the letter offer of February 19, 1954, provided: "2. Both parties shall bear their own expenses." [R. 40.]

At the time the parties entered into the letter agreement, the trust was voided. Richman's claim for reasonable fees for services rendered could, of course, only be asserted against Mrs. Tidwell and himself, because his services as agent, were only of benefit to them as the owners of the trust properties. The judgment, therefore, left Richman in the position of a claimant against Mrs. Tidwell for the reasonable value of his services. But, Mrs. Tidwell had many claims against Mr. Richman. Both parties gave up these claims.

Mr. Richman's offer, must be most strictly construed against him in the event of ambiguity, since he and his

mention paying any of Richman's claims. It would be adding insult to injury to award Richman one cent more in fees in this case. It certainly was not the intention of the parties that he be so enriched. Mr. Richman testified several times that the net worth of the trust was \$1,000. If that be true, then plaintiff, in paying \$600 for Mr. Richman's interest, was in no way compensated for the loss she sustained over a period of eight years in the payment of exorbitant fees. Looking at the letter agreement as a whole, it is obvious that each party must bear any expenses sustained in connection with the trust. Any services which Richman performed and was compensated for, was his "own expense."

The letter offer of February 19, 1954, was prepared and signed by both Mr. Richman and his attorney and must be most strictly construed against him.

Williston On Contracts, Revised Edition, Volume 1, Section 37, Page 100, states as follows:

"* * * (a) Ambiguous words in an obligation should be interpreted most strongly against the party who used them."

And again in Volume 3 of *Williston, supra*, Section 620, Page 1788:

"Since one who speaks or writes, can by exactness of expression more exactly prevent mistakes in meaning, than one with whom he is dealing, doubts arising from ambiguity of language are resolved in favor of the latter;"

See *Restatement of Contracts*, Section 236(d).

Specification of Errors 2 and 3.

Tidwell Entitled to Credit for Escrow Fees and Revenue Stamps Paid by Her on Behalf of Richman.

Da Tidwell assigns error to the trial court's failure to
her credit out of the balance of the fund for escrow
in the sum of \$329.00 and revenue stamps in the
nt of \$577.50 paid by her on behalf of Richman in
escrow held at the California Bank for the purpose of
ating the letter agreement.

order to distribute the money which the court had
its control, it became necessary for it to interpret
etter agreement of the parties, the escrow instructions,
other evidence submitted to it.

hen the parties appeared at escrow, Richman insisted
the escrow instructions provide that the buyer (Mrs.
ell) pay the seller's as well as the buyer's escrow fees
that the buyer pay for the Internal Revenue Stamps
placed on the deed of conveyance. The escrow com-
is hardly the place to argue such points. Thus, the
w instructions provide for payment of those two
by the buyer [799A]. However, immediately after
provisions appears the following:

"These instructions are not intended to and do not
amend, alter, modify or supersede any agreement out-
side of escrow between F. I. Richman and me and
with which agreement California Bank is not to be
concerned." [R. 799A.]

agreement means that the person selling is to “net” sum of \$600,000, and therefore, the buyer is to pay expenses incident to the sale. Agreements for the sale of property always provide that a purchaser shall pay a certain sum of money as and for the purchase price and deposit a portion thereof in escrow or pay the same on the same side of escrow directly to the seller for the purpose of binding the agreement. Yet the seller always expects to pay his share of the escrow expenses and all the selling costs of sale.

And, further, the letter agreement specifically states that:

“Both parties shall bear their own expenses
[R. 140.]

Furthermore, although the subjects of payment of escrow fees and revenue stamps were not specifically mentioned in the letter agreement, still the usual practice and custom with respect to the same were an integral part of the letter agreement. It was said in *King v. Star*, 32 Cal. 2d 584, 197 P. 2d 321, that:

“Equity does not require that all the terms and conditions of the proposed agreement be set forth in the contract. The usual and reasonable conditions of such a contract are, in the contemplation of the parties, a part of their agreement. In the absence of express conditions, custom determines incident

(29 P. 2d 196); *Wagner v. Eustathiev*, 169 Cal. 663, 666 (147 P. 561); *Bisno v. Herzbery*, 75 C. A. (2d) 235, 241 (170 P. 2d 973); *O'Donnell v. Luther*, 68 Cal. App. 2d 376, 383 (156 P. 2d 958).)" (Italics ours.) (Pp. 588-589.)

Therefore, the letter agreement actually provided that seller (Richman) would pay his share of the escrow and the revenue stamps on the deed of conveyance which are the seller's usual expenses.

In the case of *King v. Stanley, supra*, the seller argued that the escrow instructions pertaining to her furnishing a policy of title insurance added a provision not contained in the original agreement. But the court held that it was established in the original agreement (by custom) that she was to furnish a policy of title insurance.

Clearly, there can be no doubt as to the meaning of the offer of February 19, 1954, with respect to the responsibility for the seller's escrow fees and internal revenue stamps. There is no ambiguity involved here as to the issue. Richman apparently argues that the escrow instructions superseded the original contract of purchase, so that the seller's escrow fees and internal revenue stamps should not be paid by him because the escrow instructions specifically state that the buyer shall pay same. [R. 800.]

wording of escrow instructions. Both parties were protected by the typewritten insertion of the following words:

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and (Lyda Tidwell) and with which agreement California Bank is not to be concerned." [R. 799A.]

In other words, in this particular case, the parties agreed, that the contract of purchase as arrived at by interchange of the letters of February 19, 1954 and February 25, 1954, was not to be in any manner affected by the signing of escrow instructions.

It very often happens that parties may enter into an involved agreement of purchase and sale and then go to escrow and file escrow instructions. If the escrow instructions are inconsistent with the prior written agreement, the question arises as to which is to control. This is a question of interpretation and the prior agreement and the escrow instructions must be read together. If the escrow instructions specifically state that the prior agreement is the controlling one, then, of course, the prior agreement controls and not the escrow instructions. In *King v. Stanley, supra*, the court stated that escrow instructions which are merely customary and expected conditions to the escrow company do not take the place of a prior written agreement but merely carry it into effect.

that they refer to the same sale, the two instructions must be construed together, under Civil Code 1642, to ascertain the whole contract between the parties.

Womble v. Wilbur, 3 Cal. App. 527, 86 Pac. 921, is held that where parties entered into a written agreement and in pursuance thereof entered into an escrow whereby certain instructions were given to the escrow agent, in case of any inconsistency, it is a question of interpretation of contracts and the surrounding circumstances as to whether the former agreement or the latter instructions controlled. The court points out that the parties can agree that the previous written agreement is not to be superseded by any escrow instructions.

For the reasons hereinabove stated, it is respectfully submitted that the trial court erred in granting an agent's commission to Richman for the month of November, 1953, and in failing to surcharge Richman's share of the fund for escrow fees in the sum of \$329.00 and in the further amount of \$577.50 for Internal Revenue Stamps, the latter amounts having been paid by Mrs. Tidwell.

REPLY BRIEF OF APPELLEE LYDA TIDWELL

Considerable time was expended in the trial of the receiver's accounting and the issues pertaining to his and those of his attorney. Although counsel for Tidwell were in attendance at the trial, they made it clear to the court that they did not question these issues and all that remained to be done, insofar as the Receiver was concerned, was to award him a reasonable fee [R. 922-968] and the record shows that counsel for Lyda Tidwell did not participate in these issues.

Nowhere does the record show that the receiver failed to account properly for the funds received by him in the administration of the trust, nor does the record show that the receivership lost any money or that it failed to manage the apartment houses correctly.

The trial court permitted the receiver to reimburse himself for the sum of \$89.20 for copies of depositions paid by him. [Order of Court, R. 195.] These were copies of the deposition of the receiver [R. 871-872] and his attorney. [R. 922-968.] Both of these depositions were taken by Joseph Enright and were used and introduced into evidence in the hearing between the receiver and Richman. Since the Order of the Court ordered the receiver to reimburse himself from the funds remaining in his hands, Lyda Tidwell paid one-half of those expenses. Tidwell believes that the receiver is entitled to be reimbursed for those expenses, but only out of Richman's share of the funds in the receiver's hands.

Likewise, with reference to costs on appeal, it is

I.

Had Jurisdiction to Determine Respective Rights of Lyda Tidwell and Frederick I. Richman to Balance of Funds in Receiver's Hands.

Under "Specification of Error 1" Richman argues in his opening brief that the trial court had no jurisdiction to settle the dispute between Richman and Tidwell as to the balance of the funds remaining in the Receiver's hands (Richman's Op. Br. pp. 49-54); however, he cites no authority for the proposition.

The trial court explains in its Order *In Re Settlement of Receiver's accounts* that it retained jurisdiction, notwithstanding the dismissal of Tidwell's suit against Richman, for the purposes of settling the accounts of the receiver, paying the fees of the receiver and his attorney and distributing any balance of the funds remaining. [R. 192.]

The trial court's procedure was undoubtedly correct.

In *Pacific Bank v. Madera Fruit, etc. Co.*, 124 Cal. 462, 7 Pac. 462, plaintiff dismissed suit after a receiver had been appointed and after the receiver had taken possession of certain assets. Thereafter, the receiver filed an account and petition and asked the court to "settle the account, fix his compensation, et cetera." Plaintiff then moved to dismiss the account and petition on the ground that the court had lost jurisdiction. However, the motion was overruled and this ruling was affirmed on appeal. The decision of the court notes that not only does the court retain jurisdiction to settle the receiver's account, but it also has jurisdiction to settle the receiver's

The *Pacific Bank* case also states, at page 527:

“* * * If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, *nor make any disposition of the funds in his hands, how would the account be settled or the funds disposed of?* The money on hand and collected by the receiver would be in contemplation of law in the hands of the court and be disposed of as the law directs.” (Emphasis ours.)

And,

“If the court in which the receiver was appointed cannot, after the dismissal of the case, settle and adjust the accounts of the receiver, to what jurisdiction will he resort? The dismissal of the case ends the end of it as between the parties, but *we think the court still retained the power to settle the accounts of its receiver and to direct the application of the funds in his hands.*” (P. 527.) (Emphasis ours.)

It is clear that the receiver is holding funds for distribution at the direction of the court. In *Garniss v. Superior Court*, 88 Cal. 413, 417, 26 Pac. 351, 417, the court stated, quoting from Beach on Receivers, Section 2:

“‘Though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, his holding is not merely for the benefit of such party or of any other party; *it is the holding of the property for the equal benefit of all persons who may be found adjudged by the court to have rights in it.*’” (Emphasis ours.)

in his hands as receiver until discharged by the court."

for the same effect, see *Ireland v. Nichols*, 40 How. Pr. 471; *Whiteside v. Pendergast*, 2 Barb. Ch. 471.

II.

to Richman's Specifications of Error 2, 3 and 4.

Under Richman's "Specifications of Error 2, 3, and 4" [4-59] a number of points are apparently made, and are discussed in the order raised by him.

Charging Receiver's Fund With Real Property Taxes for the Months of January and February, 1954.

The trial court found that the receiver, having turned his records to Lyda Tidwell on February 28, 1954, did not pay certain obligations during his administration, one of these was the real property taxes for the months of January and February, 1954, in the sum of \$2.77 [R. 193] and the court held that Lyda Tidwell was entitled to a credit of one-half that amount, or \$1.38. [R. 195.]

Clearly the agreement of the parties was that the "operating obligations" of the receivership up to February 28, 1954, would be borne by the parties equally. The offer letter of February 19, 1954, stated that the buyer would "assume all operating obligations of the Richman Trust from March 1, 1954 on . . ." and again the offer further stated that "after the pay-

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The only question remaining is whether real property taxes constitute "operating obligations." There can be no question but that real property taxes are the essence of "operating obligations" in a business devoted to the operation of apartment houses for profit. It has been specifically held that "operating obligations or expenses" include taxes.

Schmidt v. Louisville C & L Ry. Co., 84 S. W. 2d 314, 315, 119 Ky. 287;

Michigan Public Utilities Com. v. Michigan Telephone Co., 200 N. W. 749, 228 Mich. 100;

Fleischer v. Pelton Steel Co., 198 N. W. 447, 183 Wis. 151.

Clearly, there can be no doubt as to the meaning of the offer of February 19, 1954, with respect to the responsibility for real property taxes up to February 28, 1954. Richman apparently argues that the escrow instructions superseded the original contract of purchase, and that the taxes should not be pro rated because the escrow instructions specifically state that taxes shall not be pro rated in escrow. [R. 800.]

But this overlooks the express provision in the escrow instructions to the effect that they shall not supersede or alter or amend the agreement between the parties.

The discussion hereinbefore had under paragraph 1 of the escrow instructions the argument in the cross-appellant's portion of this brief. The discussion of the effect of the escrow instructions on the same is incorporated herein at this point by reference.

Richman finally argues in connection with the

d into with respect to all matters except as to the
tion of rents. Mr. Enright argued that if the court
as a matter of law there was to be no pro-ration
ts, then no factual issue would be left to try. [R.
[2.] The trial court so understood also because
urt states that the parties may file a stipulation on
ebruary and March, 1954, rents. Then the court
ounsel,

“Is there any element about which we have to take
ral evidence?”

Mr. Enright, counsel for Mr. Richman, replies:

“None, in my opinion.” [R. 792.]

Robert Powsner, of Martin, Hahn & Camusi, rep-
ed Mrs. Tidwell at the pre-trial hearing. He re-
d a stipulation as to the issues urged on behalf of
Tidwell. Mr. Powsner stated, among other things:

“There are the real property taxes on the apart-
ment houses, which Mrs. Tidwell paid out of her
personal funds for the first six months of 1954.
It is her contention that there should be a pro ration
made, so that the first two months’ worth of those
taxes should be reimbursed to her out of the receiver’s
funds. That the first third would be \$4,952.77.”
[R. 785.]

few moments later Mr. Powsner stated:

“For instance, if Mr. Enright will stipulate Mrs.
Tidwell paid for the taxes, we don’t have to intro-
uce evidence she did so, and so on and so forth. And

Several minutes later, the record reveals that Mr. Richman right stated:

“O. K. now, the amount of revenue standing in the escrow, I think, is the only remaining one.” [R. 790.]

B. Utility Bills for Month of February, 1954, Were Properly Held to Be an Operating Obligation for the Month.

The court found that Lyda Tidwell was entitled to a credit from the balance of the funds in the receiver's hands for one-half of the amount of the February utility bills which she paid for personally after assuming possession of the apartment houses on February 28, 1954, at 4:30 p. m. One-half of the amount paid by her for said bills was found to be the sum of \$938.75. [R. 195.]

It is difficult to understand why Mr. Richman should dispute this item. Certainly, utility bills for the apartment houses for the month of February, 1954, were “operating obligations” of the receivership. In the operation of apartment houses for profit, utilities are a necessary expense item and one of the most basic items of operating costs.

All the arguments above stated in favor of allowing a credit to Mrs. Tidwell for real property taxes are equally as well to allowing her a credit for the utility bills.

If Mrs. Tidwell is denied this credit, then the offer of February 19, 1954, is meaningless. Also, in this instance, Richman may not use the escrow instructions to argue that the original letter agreement was in effect altered by the escrow instructions, since the latter specifically state that they are not intended to so alter the

ANALYSIS OF PROOF IN SUPPORT OF UTILITY BILLS.

Mr. Powsner also argues that there was no evidence before the court to support the credit to Mrs. Tidwell for payment of the utility bills. Under the subject of real property taxes, above, there has already been quoted from the pre-trial hearing certain colloquies between court and counsel which demonstrate that the parties, as well as the trial court, assumed that the issues with respect to the utility bills had been stipulated.

In addition, the following appears to have occurred at the pre-trial hearing:

“Mr. Powsner: And will you stipulate Mrs. Tidwell (578) paid out of her personal funds charges for utilities for the five apartment houses for portions of February in the amount of \$1,877.50.

Mr. Enright: The amount, I am sure, is less than that amount. And if we can stipulate on all of the remaining, for the record. I may be willing to stipulate on that one, also.

The Court: If you are not, it is the sort of matter that is susceptible of such easy proof that you can both probably check your figures.

Mr. Powsner: I think you have five packets of utility bills.

Mr. Enright: I will be willing to submit it on these five packets, if that is your proof.

Mr. Powsner: I haven't looked at the packets.

Mr. Enright: There they are (indicating). Mr. Lamusi handed it to me.

case for the utility bills. I understand in those cases it is shown payment in excess of \$1,877.50, and that excess would represent March payment, but the bills are \$1,877.50 relating to February utility payments.

However, I find myself in the somewhat awkward position that I haven't examined personally the items of debt here. Since I haven't examined those utility bills, we are not willing to rely on them solely for our proof as to this matter.

But I am willing to stipulate they go into evidence for whatever weight they have, and if we find it necessary that we be allowed to introduce other evidence on that subject.

Mr. Enright: I will stipulate they go into evidence, that is, the memorandum and the bills have there.

Mr. Powsner: I am speaking of the utility bills.

Mr. Enright: The five utility bills for the apartment houses.

Mr. Powsner: That is right.

The Court: Does that stipulation include the proposition that Mrs. Tidwell paid those bills out of her personal funds?

Mr. Enright: Yes."

Then, on the following page, appears Mr. Enright's statement: "O. K. now, the amount of revenue shown I think, is the only remaining one." [R. 790.]

Lyda Tidwell was handicapped at the pre-trial hearing by the fact that William P. Camusi, her counsel who handled the litigation was unable to attend, and

gh the stipulations may not have been in the best
m, there was no doubt as to their meaning.

uman argues that the court did not take evidence
rendered its decision in a summary fashion. But,
been held that if the trial court ended the trial and
nced its decision in a somewhat summary manner,
matter cannot be reviewed on appeal if the party
no objection or failed to take exception thereto.
mon v. Benjamin, 75 F. 2d 564, Cert. Den. 295 U.
, 79 L. Ed. 1694, 55 S. Ct. 831.)

ections to the judgment or decree, which might have
net, if made below, are not open to review on appeal.

National Biscuit Co. v. Litsky, 22 F. 2d 939, 56
A. L. R. 853;

Asheville Const. Co. v. Southern Ry. Co., 19 F.
2d 32;

Neil Bros. Grain Co. v. Hartford Fire Ins. Co.,
1 F. 2d 904.

as been held that where judgment was excessive on
eory of recovery adopted by the trial court, it was
lant's duty to apply there for the correction of any
e in calculation. (*Border National Bank of Eagle*
Tex. v. American Nat. Bank of San Francisco, 282
3, writ of error dismissed and certiorari denied, 260
701, 732, 67 L. Ed. 471, 43 S. Ct. 96.)

l this rule applies to decrees in equity.

Mauro v. Rodriguez, 135 F. 2d 555.

C. Credit in Favor of Tidwell for One-half Amount of Catalytic Units.

The court found that Lyda Tidwell was entitled to one-half of the cost of the Catalytic Units paid by the Trust. The said one-half amounting to \$1,300.00. [R. 195.] The court indicated in its memorandum decision that the

“were acquired by the Receiver during the course of his receivership but in doing so, he merely carried out a plan which had been put in motion by defendant. These units were assets of the trust which, under the terms of the letter agreement, were sold to plaintiff. The obligation to pay is the obligation of the Trust Receiver, as the Receiver incurred the expenses of the administration of his Trust and plaintiff was not a party to the purchase.” [R. 185.]

The reasoning of the trial court is certainly sound in this respect. The letter offer does not specifically mention this item, it would be a fair interpretation that Richman and Tidwell each pay one-half the cost.

Richman had originally contracted for installation of so-called Oxyaire or Catalytic Units at the Oliver C. Tidwell and Canterbury Apartments. However, only one contract for the installation of the Catalytic Units at the Canterbury Apartments was placed in evidence. [R. 801-803.] This contract was accepted by Mr. Richman as agent for the Trust on October 23, 1953, some 38 months before he was relieved of the management of the Trust by the receiver. The cost of these units became an obligation of the Trust at the time they were ordered by Richman, actually. Then the contracts were con-

Catalytic Units were actually installed during the receiver's tenure of office. [R. 88.] The testimony during the hearing questioning the receiver's ship is replete with evidence covering the Catalytic Units. Richman attempted to prove, and did argue, that the receiver was negligent in the handling of the Units. The receiver apparently retained the approved Units for the Catalytic Units on December 7 or 8 when they were sent to him by Mr. Richman [R. 648], and the receiver did not send them to the contractor for installation purposes until January 22, 1954. [R. 646.] Apparently, the contractor could have installed the equipment in December, 1953, but when he finally received the Units late in February, he was then short of certain materials. [R. 703-704.]

Apparently, considerable delay was involved because approval was given by the Air Pollution District on January 10th concerning excessive discharge of smoke. [R. 541.] A criminal complaint was then filed against Richman charging him with a violation of the Health and Safety Code of the State of California [R. 544] and requiring that he attend a hearing on February 1, 1955. [R. 545.]

Although the Air Pollution District had given approval for installation not later than December 10, 1954 [R. 544], the installation was not ordered until February 1, 1954. [R. 548.] There is also evidence that one person, Richman's former bookkeeper, who had been employed by the receiver [R. 405-406], gave orders to the

Whyte, attorney for the receiver, testified that he told the receiver that the contracts were valid and binding and should be carried out. [R. 556-557.]

Mr. Richman urges that the Catalytic Units for two apartment houses were granted permits for operation on March 9, 1954, and June 2, 1954, respectively [R. 805] and that the obligation to pay for work under the contracts did not arise until the said permits were granted, and that they were, therefore, obligations arising after February 28, 1954. However, only the contract with respect to the Canterbury Apartments was placed in evidence. [R. 801-803.]

The court found that the Catalytic Units were a liability of the receiver. This was a finding of fact, not as a conclusion of law. There was more than sufficient evidence to support this finding and unless clearly erroneous, it is not subject to reversal on appeal.

United States v. United States Gypsum Co.
U. S. 364, 394-395, 68 S. Ct. 525, 92 L. Ed. 746.

D. Failure of Trial Court to Surcharge Tidwell for Rents of February 26, 27, and 28, 1954, Not Error.

The court found that Richman was not entitled to recover for any rents collected by Mrs. Tidwell. [R. 196.] This refers to the rents which were collected on February 26, 27, and 28, 1954, by the apartment house manager who turned over to Mrs. Tidwell at 5 p. m. on February 28, 1954.

It is important to note that the parties signed a

and now under the control of the receiver,” and, the stipulation states: “excepting funds in bank and the control of said receiver.”

The phrases were interpreted by the receiver and his attorney to mean that he was only to keep money in any account under his control. [R. 759.] Richman testified that the phrase in question means “money in bank and under the control of the receiver.” However, the phrase appears twice in the stipulation and in both cases the phrase appears in the conjunctive and not the disjunctive. The phrase also appears twice in the order of February 26, 1954, and is identically written in both places as “money in bank and under the control of the receiver.” [R. 56.]

It should be noted that the receiver did not receive written notice of the termination of his stewardship until the evening, February 26. [R. 418.] The receiver, of course, did not know what or how much rent money was being received by the tenants on February 26, 27 and 28, 1954. [R. 55.] The receiver testified that the Western Arms and the Canterbury Apartments house managers previously had been making collections on week ends and these were to be made the following week. [R. 758.] In this particular instance, these questioned rents could not be deposited until Monday, March 1, 1954. The finding that Mrs. Tidwell is entitled to keep these funds as her personal property can be supported on several theories. The court in its Memorandum Decision points out that the letter agreement between the parties was to the effect that Mrs. Tidwell was

[R. 184-185.] The court also states, "It appears that the various rents collected belong to plaintiff because they were rentals which were being paid in advance of her occupancy during the term of her ownership of the premises."

These questioned rentals total \$1,290.59. [R. 789-790.] But counsel for Mrs. Tidwell argued that if Mr. Richman wished to claim one-half of those rents, then Mrs. Tidwell could claim that she should receive credit in the amount of \$4,499.29, which were rentals for the month of March 1954, but which rentals were collected in February 1954 by the receiver. [R. 790.] The receiver accounted for these rentals, and Mr. Richman has thus benefited because they are a part of the balance remaining in the receiver's hands. Mr. Enright argued at the pre-trial hearing that if the court ruled as a matter of law that rents should not be pro rated, then it would be unnecessary to take evidence on the amount of March rents which Mr. Richman claimed was collected by the receiver in February 1954. The court said it would examine the evidence on that issue and that the matter could be argued by counsel at the following hearing to be set for oral argument. [R. 810-812], and that the court's ruling might foreclose the taking of evidence on that issue. [R. 815.] The court, in effect, ruled that Mrs. Tidwell was not entitled to credit for the March rents actually collected and deposited by the receiver in February. [Order *in re* Settlement

his matter need be retried, Mrs. Tidwell would be left to a ruling as to whether she herself has a right to the March rents collected in February by the receiver. If she has sole rights to such items, then a further hearing is necessary to introduce evidence on that

trial Court Did Not Err in Holding Mrs. Tidwell Entitled to Petty Cash Fund.

The court found that Mr. Richman was not entitled to a part of the petty cash fund of which Mrs. Tidwell had possession on February 28, 1954. The stipulations and order of the court, both of February 26, 1954, discussed in subparagraph D above, clearly show the intention of the parties that Mrs. Tidwell was to assume control of the petty cash fund. This petty cash fund existed at the time of the receiver's assumption of his stewardship. The receiver's schedule of receipts and disbursements reflect a petty cash fund in the amount of \$785.00 as of November 30, 1953. [R. 104.] Clearly, the petty cash fund was an asset of the Richman Trust.

In its Memorandum Decision, the trial court reasoned that Mrs. Tidwell had "*purchased all of defendant Richman's interest in that Trust and that includes the petty cash fund which existed simply as an operating incident to the individual apartment house.*" [R. 185.] Mr.

III.

Specification of Error 8—Accounting.

Under Specification of Error 8, on page 66 of Richman's Opening Brief, he apparently also make tain other claims against Mrs. Tidwell as follows:

A. Compensation Insurance Refund.

Richman argues that he is entitled to a credit of \$158.00 compensation insurance refund which was the Trust at the time the receiver surrendered possession of the assets to Mrs. Tidwell. But here again any refund was an asset of the trust and the whole interest in the same passed to Mrs. Tidwell when he sold his one-half undivided interest to Mrs. Tidwell. Apparently Mr. Richman wants to pro rate when it involves a item now in the possession of Mrs. Tidwell, but he does not want to pro rate any of the operating obligations which were incurred prior to March 1, 1954, in cases where the receiver failed to pay for the same. Mrs. Tidwell was thereafter forced to pay those obligations in full from her own separate funds.

All the arguments hereinabove advanced with respect to the petty cash fund also apply here.

B. Richman's Fee of 10% as Agent for November, 1954.

Mr. Richman claims he is entitled to his full ten percent (10%) fee (based on gross receipts) for the month of November, 1954.

and argument and the same is incorporated by reference herein at this point.

It is to be said here that *Richman had released Mrs. Tidwell of any and all claims* which he had against her. Other than that, his letter offer of February 19, 1954, stated that *each* was to bear his own expenses. It would be manifest injustice to permit him to collect a reward for services rendered after the parties had executed mutual releases in each other's favor.

Mistake in Mathematical Computation of Order In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver.

Richman points out at pages 58 and 59 of his Opening Brief that the mathematical computation of the order is incorrect with respect to the credit awarded him because of the receiver's payment of the mortgage payment. It is true that the computation was incorrectly made to his disadvantage. However, he does *not* point out that the *same* mistake was made with respect to the credits to which Mrs. Tidwell was entitled. The result of these errors, which were committed by the writer in the preparation of the order, was that Mrs. Tidwell was awarded \$1,340.49 *less* than the sum to which she was entitled. Conversely, Richman was awarded the same amount in excess of the sum to which he was

Conclusion.

It is respectfully submitted that for the reasons here above stated, the order of the court settling the Account of the receiver, awarding fees, and distributing the balance of funds is substantially correct and should be affirmed with the exception that the mathematical errors committed therein should be corrected by leave of the court, and appellant Richman should be denied any credit whatsoever for management fees, and cross-appellant Lyda Tidwell, should be allowed a credit for the expenses and costs and charges properly chargeable to appellant Richman as the seller, but which were, in fact, paid by Lyda Tidwell from her own personal funds.

Respectfully submitted,

MARTIN, HAHN & CAMUSI,

By WILLIAM P. CAMUSI, a

LAURENCE B. MARTIN, a

*Attorneys for Appellee and Cross-Appellant
Lyda Tidwell.*

In the
United States Court of Appeals
For the Ninth Circuit

ERICK I. RICHMAN,

Appellant,

vs.

TIDWELL, ROY E. HALLBERG, as Receiver
of all the real and personal property constituting
the former Richman Trust, and JOHN WHYTE,
attorney for Receiver,

Appellees.

TIDWELL,

Appellant,

vs.

ERICK I. RICHMAN, ROY E. HALLBERG, as
Receiver of all the real and personal property con-
stituting the former Richman Trust, and JOHN
WHYTE, attorney for Receiver,

Appellees.

CONSOLIDATED BRIEF ANSWERING
APPELLANT TIDWELL'S BRIEF AND REPLY TO
RESPONDENTS' HALLBERG AND WHYTE BRIEF

BRADY, NOSSAMAN and WALKER
and
JOSEPH T. ENRIGHT

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No. 14702

**CONSOLIDATED BRIEF ANSWERING
APPELLANT TIDWELL'S BRIEF AND REPLY TO
RESPONDENTS' HALLBERG AND WHYTE BRIEF**

Foreword

revelity, and appellant Tidwell's conclusion (p. 38)
the order of the court settling the account of the

“Tidwell”. Respondents Hallberg and Whyte were referred to as “Receiver”. In replying to Tidwell, the appellant will again consider the appeal in the following order: I. Distribution of funds under the Settlement Agreement; and II. Fees. Thence, the respondents Hallberg and Whyte, who were required to be initial fiduciaries, charges of untrue, argumentative statement of the case and argument, will be categorically answered.

I. Reply to Tidwell Brief.

A. The Settlement Contract and Acts of the Parties

Logical presentation prohibits, (if it is necessary) answering Tidwell’s unjustified assertions such as frequent assertions of fraud on the part of Richman. It suffice it to say that the court in its Memorandum of Decision (R. 5), made no mention of fraud on the part of Richman, but stated (R. 5):

“It now appears that plaintiff has made her case on her theory of undue influence in inception of the arrangement, and the only remedy for setting forth the limitations immediately and described is to explain to any reviewing court that this case has been tried upon a limitation as described.”; or remarks such as

“a nice ‘fat’ fee when we realize that the 10% fee Richman seeks for the month of November, 1953. amounting to

loss she sustained over a period of eight years payment of exorbitant fees" (p. 14), except to observe that the premise to the Settlement Agreement was " . . . , the court decision gave your (Tidwell) what she was offered about two and half years ago before suit was filed, namely, a disbursement of the trust" (R. 139), and that during appeal eight year management of the trust as agent its value increased from \$375,000 to \$1,200,000. (R. 603-604) It is interesting to note that Tidwell makes no mention of the Receiver's fees and expenses although it has been shown (Op. Br. 42) that the Receiver's fees and expenses were greater than the fee of Richman and that he paid his own expenses. Also the expenses allowed to the Receiver and his attorney are definitely contrary to the court's own statement: (R. 188):

"It is noted that the total of receiver's and attorney's fees is approximately \$2500.00 less than the fee which would have been enjoyed by defendant while handling a like sum of money while he was in charge."

Appellant's Statement of Facts (Op. Br. pp. 4-14), in an effort to accurately refer this court to the record and to quote only portions of the agreement. The argument (pp. 54-59), has been challenged by Tidwell and the Receiver. The Receiver at pp. 18 and 19, as a part of his argument, states that the "settlement" was not

the Receiver was not required to pick up from managers rents in the sum of \$1290.59, collected before 5:00 p. m. on February 28, 1954.

An analysis of the following pages of Tidwell's book reveals that it is primarily concerned with the construction of this Contract: pp. 10-15—Appella's claim against Richman Trust for his November services, being an operating obligation of the trust; pp. 20—Tidwell's claims for escrow fees and revenue stamps; pp. 23-36—Tidwell's claims for real property taxes, utilities, and catalytic smog units payments; her right to retain rents and petty cash.

Constructive analysis and a reply to Tidwell's least inaccurate quotation (p. 11) of the Settlement Agreement, justifies accurate quotation of at least paragraphs 4 and 5, after observing the following. The express conditions to the Settlement required the parties to execute various documents, perform various acts, and assume certain obligations; they were:

1. Mutual releases conditioned upon the entire settlement being carried out;
2. Bear their expenses. (expenses whether of litigation, the escrow or some other expense be undefined);
3. Dismiss the lawsuit with prejudice.
4. and 5. will be quoted.
6. Terminate the Trust.

escrow on or before May 1st. (Subject, of course, to paragraphs 4 and 5).

Tidwell required to elect on or before February 25th, and purchaser deliver the \$100,000 by February 26th. (Tidwell elected to buy).

Parties execute whatever is necessary to carry out the terms of this arrangement.

Each party take such steps as he or she deems necessary to protect his or her legal position prior to May 1, 1954.

Paragraphs 4 and 5 are as follows: (R. 140-141).

A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the re-appointment of a receiver as might occur under 7 (c) hereof. (Underscoring ours).

The receiver shall file his report and after the payment and/or provision for all of the receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman." (Underscoring ours). (R. 140).

Paragraph 4 specifies no hour at which the buyer

cuted (R. 54), which specified the time as being: "o'clock p.m. Sunday, February 28, 1954", being end of the month, when Tidwell would be entitled "all receipts from March 1, 1954". It is apparent the Receiver was to collect the "receipts until p.m.", paragraph 5, which requiring him to report after payment and/or provision for all of the (1) Receiver's claims; and (2) Receiver's expenses; and operating obligations of Richman Trust to February 28, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman. When further considers the Stipulation the parties executed on February 26th (R. 54), the court Order pursuant to the Stipulation (R. 55), and the Escrow Instructions executed on the same date by the parties and their attorneys, it is more apparent. (R. 799). The Receiver argues (p. 18) that the petty cash funds in the hands of the managers, totaling \$785.00, was being purchased by Tidwell, and the trial court, he argues, so determined. Thence the Receiver argues that the rents collected by the managers before 5:00 p.m. were incapable of being retained or collected by him because "the banks were closed and he had no safe". Although safes were available in the apartment houses (R. 9). Further, he argues, "it appeared that these monies represented payments by tenants in advance," there being no evidence to support the assertion, (p. 19). Tidwell argues that the Stipulation of the parties terminating

the Receivers as of 5:00 o'clock Sunday, February 1954", as the parties expressed themselves on the different occasions in the Stipulations, that: "these were interpreted by the Receiver and his attorney to mean that he was only to keep money in any account under his control." (p. 33). Such a conclusion ignores the escrow instructions which provide there be no proration of rents. It ignores the specific designation of 5:00 o'clock p. m., as being the time when the Receiver would cease to actively make payments and obtain "receipts". It renders the words: "under the control of the said Receiver" of no effect, since naturally a Receiver controlled the receiving bank account. Further, it ignores one of the purposes of the Stipulation own orally expressed intention of this Stipulation. This attorney, Mr. Wilfrid P. Camusi stated, when arguing the question (R. 10): "It was conceded on all sides that all assets, including money in the bank or under the control of the Receiver at that time were to be turned over to the Plaintiff, and they were turned over." The attorney's concession is and has been the issue on these

8. Appellant's November Fees.

Edwell affirmatively seeks (p. 10) to deprive Richard of the reasonable value of his services fixed by

motion for new trial was pending and the trial court stated it anticipated an appeal. She was not required to settle and neither party would thus have been required to execute the Mutual Release of each other or to dismiss with prejudice, as they were required to under the terms of the Settlement. Tidwell's further evidence is her assertion that Richman's claim was against the trust for the value of his services or the agreed fee under the terms of the trust. His claim was against Richman Trust only. Three distinct items were provided for in paragraph 5 of the Settlement Agreement, which were conditions to the dismissals and releases. The three items were: (1) Receiver's claims; (2) Receiver's expenses; and (3) operating obligations of Richman Trust to February 28, 1954. The only remaining Trust or Receiver's obligations after the receiver had paid \$6,121.40 (Accounting R. 119) in accordance with the Sunday afternoon phone call by the receiver and her attorney to the trial judge (R. 427-934-935), were Richman's agent's fee for November, 1953 set up against the Receiver in the amount of \$3104.33 (R. 120) for the taxes. The escrow expressly provided no tax deduction. The smog control catalytic units did not become an obligation until they were accepted by the Los Angeles smog authorities, which occurred March 9th to June 2nd, 1954. (R. 805). The receiver testified that he carried Richman's claim against the trust for November services on the books as an obligation of the trust.

services for operating the trust were valuable to the extent that during his tenure its assets increased in value from a value of \$375,000 to \$1,200,000, and he should be paid in accordance with paragraph 5 of the settlement contract out of the funds in the hands of the receiver, because the Trust contract and the value of his services is an "operating obligation of Richman Trust" existing before February 28, 1954. The dismissal with prejudice was dated March 3, 1954 (R. 125), and the Final Release bears no date (R. 796), but each was required by the Settlement agreement the same as the payment of this operating obligation of Richman Trust was required.

C. Tidwell Escrow Fee and Revenue Stamps.

Tidwell asserts as errors 2 and 3 (p. 15) that she is entitled to escrow fees and revenue stamps. The assertion is made notwithstanding she and her attorneys carrying out the agreement signed the escrow instructions on the very day — February 26, 1954, in which she agreed (R. 799A):

"Notwithstanding the printed provisions in these instructions, I agree to pay, in addition to the buyer's costs and expenses in this escrow, all the seller's costs and expenses of this escrow and the cost of the policy of title insurance, revenue stamps and recording and filing all instruments and docu-

821) that the Settlement Agreement and the escrow instructions must be construed together. She cites authorities which were supplemented by appellant's additional authorities. All of her authorities she cites to this court at pp. 16 and 17. Of course, she argues these authorities hold, and they do, that: "in the absence of express conditions, custom determines incidental matters relating to the opening of an escrow." Here there is no proof of custom and no reason to consider custom because the express condition to wit: no proration and no expenses, was specifically stated in the escrow instructions. The agreement expressly stated each party bear his own expenses, relating to their expenses of the litigation which was being settled. If there was any ambiguity in the Settlement Agreement or Sale Agreement, the Agreement was not "superseded" or the escrow did not "come over" or "alter" or "amend", as Tidwell so frequently inserts these words in her brief; rather, the Sale Agreement was specifically clarified and not modified by the escrow instructions. Richman, as seller, executed and delivered the documents required of him and thus complied with the Agreement. The very next sentence in the escrow instructions, immediately following the quoted terms relative to Tidwell paying the selling costs and expenses, is the following: "These instructions are not intended to and do not amend, modify or supersede any agreement outside of es

the letter agreement heretofore mentioned, which agreement provided many things with which the law, as such, was not and could not be concerned; 1) mutual releases of all claims; 2) bearing their expenses; 3) mutual dismissals with prejudice; stipulation relative to the termination of the receivership; 5) disposition of the funds in the hands of the receiver; and 6) termination of Richman Trust. The escrow concerned itself with the buying and selling method of payment of the half interest of Richman Trust as set forth in paragraph 7 of the Agreement. Obviously it was not the intent of the parties that the escrow should in any manner alter, amend, or change the requirements 1 to 6 contained in the Agreement.

D. Utility Bills.

Midwell argues and the trial court so held that the receiver failed to pay these bills in the sum of \$1,877.50.ellant's Opening Brief (pp. 4-14) remains unconnected that there has been no trial on the issues of utilities and tax proration in the amount of \$4,952.77.ell attempts to avoid the trial court's failure to hold a trial, or as the trial court once said, a hearing before a Master (R. 842), by assertions on page 25 and on pages 27-28 based upon R. 790, 792, that the parties had stipulated upon these items. It will be noted

Counsel had previously stated concerning the utility bills in the amount of \$1877.50: "the amount, I assure, is less than that amount." The utility and bills were never identified or received in evidence. The trial court stated (R. 809), concerning utility taxes and catalytic units: "Well, it seems that you have some fact issues as to which evidence will be necessary unless you get together on stipulations, we don't look too hopeful." The record here is that we well never had these bills marked for identification have they ever been received in evidence. Later June 21st record shows (R. 817) that: "Mr. Pows I think we ought to have these while we discuss matter", referring to the utility bills. The hearing then adjourned.

The next proceeding occurred on September 1954, (R. 817-843). Again the parties argued the construction of the Sale Agreement and escrow instructions. Again Tidwell (R. 836) stated she desired to offer some utility bills in evidence. Objection was made and it was pointed out (R. 837) appellant would desire to present evidence if the utility bills were received in evidence and the court sustained the objection. Then the court stated (R. 837) in reply to Tidwell's further argument: "The Court: If on the main contention I should ultimately decide you were right we will refer the whole question to a Master for taking of evidence. Mr. Camusi: I see. The Court:

et to Richman being paid at least a reasonable fee
 use she had accepted the services and further:
 et to keep from having laches run against her,
 ldn't she find herself with what she had accepted?"'
 n this state of the record the court took the matter
 er submission. (R. 842).

Concerning these same utility bills, attention is di-
 ed to the Receiver's Accounting. It will be noted
 the Receiver paid each month utility bills for the
 apartment houses (R. 108, 110, 114) and in Febru-
 (R. 115) the utility items of "water", "electric
 power", "gas", "telephone and telegraph" in the
 unt of \$1307.32. Further note, the Receiver's ex-
 ditures made in March totaling \$6,121.40 which in-
 ed utility bill payments to the Department of
 er and Power, Pacific Telephone and Telegraph
 pany, and Southern California Gas Co., in the
 unt of \$1329.05. (R. 119).

E. Catalytic Units.

Midwell argues (pp. 30-32) that these units should
 charged against the Receiver's funds. She points
 (p. 31) that the Receiver could have had them in-
 ed in December, apparently acknowledging default
 ne Receiver. Thence, that the units were not in-
 ed until after January 22nd. Payment did not be-
 an obligation of Richman Trust or the purchaser

quoted amount is required upon the execution of tract, balance of which is payable upon receipt of Los Angeles County Air Pollution District Permit to operate". The Permits were issued (R. 805) on March 9th and June 2nd, 1954. The purchaser, Tidwell, under the Settlement Agreement paragraph 4, is entitled to all receipts and shall assume all operating obligations of Richman Trust from March 1, 1954. . . . Uncertainty exists in the record as to the date on which installation was completed. No uncertainty exists as to the dates on which payment for these permits became an obligation. The permits were issued on March 9th and June 2nd, 1954. Had the Richman Trust continued, payment for these obligations would have then been required, but the parties expressly contracted that the purchaser (Tidwell), pay this obligation accruing after March 1st.

There are many other contentions or remarks contained in the Tidwell brief, such as: (p. 30) that one of the contracts for the catalytic units was placed in evidence. This is erroneous but apparently the printer failed to print both contracts. He made the (R. 803) "(duplicate copy attached)", which is not entirely correct because the contracts while identical in provisions and terms varied, as to designation of apartment house; and (p. 20) "The trial court permitted the Receiver to reimburse himself for the sum of \$800 for copies of depositions paid by him. (Order of Court

s, as determined by the trial court, or the net sum of \$4,974.56. This fallacious accounting, evidenced by Tidwell's draft of the trial court Order and pending motion to this court for an Order confirming the trial court's conditional ex parte Order, require comment. Appellant relies upon his proposed disposition of funds appearing (Op. Br. p. 66).

Reply to Receiver and His Attorney.

An effort will again be made to quote from this minous record to demonstrate the unusual occurrences and conduct in this receivership.

A. Receiver's Charge of Untrue Statements.

At pages 2 and 3 he asserts by conclusion, not only truthfulness but incompleteness; thence he asserts by examples. Completeness requires a review of the record, and this is invited. Appellant can only refer to the examples. The first is that the record was sufficiently cited concerning the statements at the top of page 34 (Op. Br.), as to whether the Receiver was available to attend to a refrigeration breakdown occurring in February, 1954, in one of the large apartment houses. The manager testified (R. 471-):

'I started trying to get in touch with Mr. Hallberg on the afternoons of the 17th, 18th, and 19th, and was never able to contact Mr. Hallberg. About

The only diary entry of the Receiver and Miss Grove appears on the 19th: "To W A (Western Apartments) Re: Refrig." (R. 403A). At R. 472 the manager explained she, on the 20th, after contacting appellant, employed another refrigeration company.

"Then he (Hallberg), called me on the phone." Q. On the morning of the 20th? A. Yes, I don't know where he was, I just judged he was at his office."

Thence the Receiver charges that several items set forth on page 42, Op. Br., as being a part of the Receiver's accounting, are not a part of his Account. The first amount was a "salary expense item of \$1628.18 (R. 410)." Bearing in mind this Receiver asserts speaking from his accounting experience it is difficult to see why he should charge untruthfulness unless it be for the purpose of prejudicing appellant before this court. It was the Receiver had to do to ascertain the \$1628.18 salary expense he incurred was to add the following items: salaries appearing in each one of his monthly itemizations of disbursements:—R. 110—\$450.00 and \$250.00; R. 114 — \$450.00; R. 116 — \$600.00; R. 119 — \$1028.18 totaling \$1628.18, and each being designated in his itemization as "salaries and wages", except the last being designated "Jean Findeisen—Office". The same procedure for petty cash items.

Additional improper examples are: That ap

4). The record shows (R. 664) that Tidwell's attorney stated as follows: "If they think, defendant man thinks he is entitled to any of this money, that nothing for the plaintiff and defendant to fight in their lawsuit." The record from that point to 70 establishes that not only did the Receiver fail to report this refund in his accounting, but further, he well admitted the right to a refund was "turned over to Mrs. Tidwell". Thence the court stated:

"Let's mark that down as one item to be considered in the pretrial that is coming up."

ce, again at R. 671 the court directed:

"That is where I think we should consider it, instead of considering it with this Receiver who was subject to an Order."

far as the Receiver is concerned it is an admitted fact on his part to acknowledge anywhere in his accounting that a refund was payable upon the \$400.00 reported in his accounting as having been expended thereon. (R. 113)

Another asserted untrue statement is: that the Receiver intended to delegate his receivership duties to Cosgrove (the maiden name of his wife), R. 380 correctly cited, it is as follows:

“A. I had intended to delegate the housekeeping to Miss Cosgrove.”

There is no uncertainty of the intent of Hallberg to turn over the performance of the important receivership duties to his wife when R. 380 is supplemented by R. 433-4, where he admitted that he went out on December 1st, or during the first three days after the Decision of November 30th to appoint a receiver, and introduced Miss Cosgrove to the managers in the following manner:

“Q. What did you tell the managers?

“A. I told them she was going to act for me.”

See also R. 264-265, the Receiver's direct testimony and explanation of rendition of services by Miss Cosgrove.

The fiduciaries Hallberg and Whyte, as a Receiver and an attorney, were supposed to be impartial in this transaction. Their failure to so act is evidenced by their improper charge of making untruthful statements.

B. Receiver's Preliminary and General Statement

This generalization of the facts (pp. 4-9), is substantially correct except for the following conclusions:

1. The Receiver and Whyte assume that the Receiver had a right to act by the Decision of

date appellant was pleading with the trial court for the amount of supersedeas bond which was fixed (R. 32, 216). Before qualifying they took over the bank account of the appellant, had collected monies from the managers of the five apartment houses and directed the managers to pay the rents to them (R. 54). The Trial Judge aided the Receiver's attorney, according to their records, (R. 555), in obtaining the Receiver's bond; thus, it is improper for the Receiver and his attorney to claim fees from "December 1953". 2. Whyte's conclusion that his time "was wasted to defending the Receiver against Richman's attack," appearing page 6, is likewise an improper conclusion. The Receiver had refused to state what compensation he desired, and all the acts, or non-action, set out in the Opening Brief, had to be examined to determine what fee, if any, he was entitled to receive. Therefore, the attorney sought \$3,000, plus extraordinary expenses in an undesignated amount. Is it proper for the Receiver to now say that appellant forced him to defend himself when appellant objected to certain items on the Account, after having sought to find out from the Receiver what fee he wanted, thence went forward to the Court's statement that all the facts should be developed—to develop all the facts? 3. At pages 7 and 8 the Receiver and his attorney assert there is no attempt to surcharge the Receiver and, therefore, appel-

the amount of \$785.00, the February rents in the amount of \$1290.59, the compensation insurance re in the amount of \$158.00, the court having, in fact, charged the Receiver in the amount of \$2027.25, b a premature payment by the Receiver on one of apartment houses; the condition being that t amounts be a charge against Tidwell's right to a por of the funds remaining in the hands of the Rece subject to their propriety being determined when if it became necessary for Tidwell and Richma litigate their Settlement Contract of February 19, 1 (R. 139-144). The Receiver's partial quotation 7-8), avoided stating the following:

“Mr. Enright: I intend to and seek to charge Receiver personally and submit that the ch should be against the fund.

“The Court: Well that means against the \$30 which he still has in his possession. . . .

“Mr. Enright: Could I have read? (The re read).

“Mr. Enright: Certainly, Your Honor, I st that there is no need for this Receiver havin bring an action against the plaintiff to rec their money, that the plaintiff has received benefits of and added to the fund; rather, cha to the plaintiff.” (R. 619)

Further, the Receiver failed to quote the portion of record (p. 685), appearing before Mr. Whyte's st

Mr. Enright: I would merely point out the Court Order was that the Receiver retain monies under his control, the Order of February 26, 1954. This is an item of \$1290.59 that he did not retain. I am concluding the evidence on the point. Whether it is relevant or not, I can only state what the Court Order was." (Op. Br. pp. 49-54).

C. Receiver's Topical Statements of the Case.

a. Receivers Representations.

On pages 9 to 11 the Receiver argues that he merely "chimed in" when he stated in reply to the Court's questions as to his experience and availability: "That is correct". Appellant refers to his Opening Brief (pp. 1-10), which was and is an effort to state the record as it appears, not to state the record only. Appellant replies that he, as Receiver, assumed the Court did not think that it was prudent to entrust the wife of Mr. Hallberg to supervise five hundred workers in the operation of 400 units contained in apartment houses which the parties themselves by contract agreed had a value of \$1,200,000.00. (Settlement Agreement R. 141). In fact, apparently during the prolonged, intermittent hearings the Court was embarrassed as a result of its appointment, although it completely exonerated the Receiver in its ultimate Decision. For example, the Trial Judge volunteered during the hearings, having failed to act upon the Petition for relief.

would involve, and I told him in a general way what it would be. I made the call because, although my acquaintance with him has not been personally very extensive, I have known him casually. He was a neighbor of his, and I have known of properties that I thought he was managing for an aunt, a relative. It turns out from the deposition that it was his own property. I had known from just casual conversation that he had had a responsible position in the management of considerable income property in Chicago. I had thought for a term of years. And it turns out now it was just a little over a year if the deposition is right.” (R. 257-258).

Long after the appointment and during the course of the hearing, it was discovered that the Receiver’s management of apartment property was as follows: During the depression in 1930-31 he was employed by Gus L. who was a bondholder of certain bonds issued by a bank at Chicago. (R. 378). Secondly, as now acknowledged by the Receiver in His Brief (p. 16)

“About December, 1949, he and Mrs. Hallberg purchased a 16-unit apartment house in South Pasadena which they held for approximately eleven months and in which they installed Mrs. Hallberg’s mother as manager.”

As stated by appellant’s counsel on November 3, 1950, when the Trial Court called counsel in to deliver

assumed by Mr. Hallberg's statement: "That is
 et", that Mr. Hallberg was an experienced mana-
 Los Angeles area income property; that he did
 mean that a place of business in Pasadena would
 four-family flat rented to strangers.*

stated in the Opening Brief, if the representa-
 made by the Receiver to his former neighbor, the
 Judge, on the week before the Decision, (none of
 appellant has been privileged to inquire concern-
 and which must be accepted upon the volunteered
 nents of the Trial Judge), then at least the Re-
 's hands are so unclean that they should be
 ered when fixing his fees and do not justify a
 \$2,000 per month, when he was then expending a
 ur work week as a permanent employee of the
 y of Orange at a salary of \$355.00 per month.

b. Petition to Disqualify.

e Receiver's Topical Statement is an argument
 ot a statement of facts. Appellant here refers to
 ening Brief pp. 22-23. The Court having closed
 atter by failing to act and stating: "It is closed"
 66), there is no justification for the Receiver to
 the conclusion "it would have been wholly un-
 ary" to call the Trial Judge as a witness. A liti-
 who, according to the Trial Judge, has never
 any trust funds (R. 212), and who is the half

owner of assets of \$1,200,000, should be permitted to inquire into the circumstances surrounding the Trust. The Judge who stated he would consider fixing supersedeas bond (R. 216, 217, 31), but instead participated in obtaining a Receiver's bond (R. 555) to make effect the appointment of one who represented to the Judge that he had acted as Receiver for years, had managed extensive properties in the area of the \$1,200,000 assets, and had a place of business, when each statement was at least an equivocation, if not a false statement.

c. Receiver's Availability and Earnings.

The Receiver, at page 12, now acknowledges that he worked in the County of Orange, 40-hour week, 8 hours a day, Monday through Friday employment. This, he and his wife never disclosed to anyone (R. 526) before termination of his active duties, or until deposition proceeding after he filed his accounting. Thence the Receiver relies upon the volunteered statement of the Court (R. 258), that appellant had not devoted his entire time to the acting as agent for the Trust of the same properties, he being one of the Trustors, therefore, the Receiver could take, we assume, full time employment at the County of Orange. The record does not justify such a volunteered position. The Receiver stated to the Court and it stated to the parties that the Court had interviewed Mr. Hallberg the week before its November 30th decision and had been

previous application was employed to start full work for the County of Orange on Monday, December 7th. He should be compensated proportionately on the basis of his earnings at the County of Orange, \$355.00 per month (R. 328), or his immediately preceding employment by Narmco Corp., a fishing pole manufacturer, at \$350 per month (R. 364), or his Morrison Construction Company drawing account of \$100 per month from May to December, 1951. Perhaps consideration should be given to the Receiver's assertions that he had a salary of \$10,000 a year in 1947 while employed by Refrigeration Corporation until "they got into financial trouble back East" (R. 875), although he now states in his Brief: "About 1949 Hallberg began having trouble with his back—for months he was in bed and in the hospital and accordingly his employment record from then until the time of the receivership was spotty." (p. 15). But, yet we are in doubt because he states (p. 16), that he spent several months, commencing December, 1949, doing: "physical work on the premises, including painting, carpeting, hanging doors, laying floor tile, and repairing the roof" of the 16-unit apartment house he owned during the period. Further evidence of the Receiver's evasiveness when asked concerning his qualifications by experience and previous earnings are: the Receiver had explained that he

Gillian was "I know of him", he explained that he a helper or gave aid in rendering services as an efficiency expert. His assistance was organizing a group but:

"at that time I was not capable of any sustained work.

"The Court: You had some physical difficulties.

"The Witness: Yes, I have been bothered several years with a bad back that incapacitated me; over months on end I was in bed and the time I got up were limited. I didn't do any physical work and I finally had an operation." (R. 367)

Secondly, the effort upon deposition of the Receiver and his attorney (R. 881) to not disclose the details concerning the Receiver's County of Orange employment, when he should have been himself attending to the new duty of operating the apartment houses containing 400 units. The trial judge criticized appellant stating the Receiver was treated like an "embezzler" (R. 859). With such an admitted actual employment record, appellant asserts no consideration should be given to the Receiver's claims that he made large profits before 1951.

d. Receiver's Services.

The Receiver asserts he handled "the myriad problems" in the administration of the property with the assistance of

y (R. 263-270), where he explains how he delegated problems involving the apartment houses; or to qualified admission on cross-examination of his intention to act as Receiver through Miss Cosgrove, wife, (R. 433-434) to determine how he performed trust of a receiver.

The Receiver, at page 17, asserts that he "set up new and improved bookkeeping system" (without a final (R.274).) At another point the Receiver and attorney attempt to explain why they were not able to comply with the Court Rule requiring a Receiver to make a report within 60 days. The sufficiency of the "new" and whether they were "improved" books, was substantially answered at R. 46 where respondent's written Affidavit states why the accounting had not been filed,—when seeking an extension of time.

"Affiant has been informed by Mr. Roy Harrison, said Receiver's bookkeeper, that said Harrison has had considerable difficulty in assembling the accounting data which must be included in said report, notwithstanding the fact that he has been working up the same for a number of days. Said Harrison has further informed this affiant that he will be unable to have said accounting data in final form prior to some time the week commencing January 31, 1954."

The Receiver admits that appellant charges with violation of the Court Order terminating active duties "5:00 o'clock p. m. Sunday, February 1954", having previously denied that the three of \$785.00 petty cash, \$1290.59 rents which the receiver's accounting reported as being \$2,000 (R. and prepayment of \$2,027.25 to the benefit of Tidwell and thence he attempts to justify his ex parte interpretation of the Settlement Agreement on these items. He first states that petty cash in the possession of managers was not money "under the control of the Receiver", rather, it was an asset of Richman Trust "and became the property of Mrs. Tidwell". The Court Order was that he terminate his active duties at 5:00 p.m. He did not take possession of monies under his control, he states, "for the good sufficient reason that they were part of the working properties of the buildings". He fails to acknowledge that he, in his accounting, charged himself (R. with \$785.00, being received, but before he terminated his active duties he issued checks all in February, to the five different apartment house managers for the following sums: \$91.18, \$95.73, \$18.61, \$54.81, \$ (R. 115), to re-establish the petty cash fund of \$785. These monies were drawn from the bank account.

Reference is here made to the Reply to Tidwell Brief analyzing the Settlement Contract, the Es-

re state the Receiver, by law, is required to be impartial. The Receiver and his attorney admit that on the Sunday afternoon, after their golf game, they called the Trial Judge by phone, advising him that Enright and Tidwell's attorneys had disagreed concerning certain other expenses incurred in the operation of the receivership. (R. 428). An impartial Receiver should have at least given appellant an opportunity to submit his position to the Court upon the disposing of this petty cash fund and upon the other matters involved in this appeal.

Concerning the rents collected by the managers on the 5:00 p.m. February 28th, at which hour he was to terminate his active duties, the Receiver asserts (R. 182-183) he could not maintain his control over these rents or take possession of them because "the period of question being a weekend the banks were closed." The Receiver justifies his failure to act until 5:00 p.m., after the Trial Court decided, (Citing R. 182-183), that these rents belonged to the purchaser Mrs. Tidwell—he acted before this decision now on appeal. At least the litigant was entitled to the Receiver continuing his active duties and collecting these monies, as he states he came to Los Angeles from Orange County on weekends, and this was a weekend, until the Trial Court decided the question. The Receiver, by justifying his payment of \$2027.25, because it

that the Receiver had never previously prepaid the installments; in fact, they were days delinquent. Further light is thrown upon all these items by R. which enumerates a great number of check stubs dated February 27th and 28th, by the Receiver, when he was performing his duties as Receiver on weekends. He could have taken possession of the funds "under his control"; rather, obviously he intended to and did so to benefit Tidwell. The Receiver's conclusion that not a penny of the three items "was lost or dissipated" is true insofar as Tidwell and the Receiver are concerned, but to date they have been more than lost (appellant's expenses in this proceeding considered), insofar as appellant is concerned.

e. Accounting Services and Experiences.

Appellant relies upon its Op. Br. pp. 32-34, the admissions in the Receiver's Brief, and other portions throughout this Reply.

f. Refrigeration Break-Down.

The Receiver, at page 21, in no manner attempts to refute his own testimony and diary which are quoted at page 34 Op. Br. Suffice it to again state that the litigants were led to believe that a full-time court-appointed receiver had been appointed, who would be available each day to attend to emergency problems such as refrigeration breakdowns when they occurred.

ied she, upon discovering the problem, phoned Hallberg at the Orange County Assessor's Office that she had not told anyone he could be reached (R. 526).

g. Air Pollution—Criminal Citation.

The Receiver asserts that "it is only necessary to set forth the facts fully and accurately" (p. 21), in his effort to explain why these Contracts, executed before he was appointed as Receiver on December 2nd, were not completed until after February 1st. His statement (pp. 21-24), is substantially in accordance with appellant's statement (pp. 35-37), except in two particulars. The Receiver attempts to justify his nonaction because Harrison having failed to carry out the instructions given to him about the first of the month", asserting: (p. 3) "On January 22, 1954, Hallberg found the plans for the air pollution control equipment at his home at the Oliver Cromwell". (R. 642). A reading of Exhibit 2 reveals:

"The next time he (Harrison) was able to get in touch with Mr. Hallberg was when he came to the office of the Receiver at the Oliver Cromwell on January 22nd. Mr. Hallberg went through his briefcase and found the Application and approved plans. That Mr. Hallberg then dictated the letter for Mr. Harrison to send to the Air Pollution Con-

The letter itself appears R. 646. Smog control was is a serious metropolitan Los Angeles problem. the Receiver been attending to the operation of the apartment houses each day, instead of Friday afternoons and weekends such as this particular January 22nd, the smog control units could have been installed when the materials were available (R. 710), in December, provided, of course, the attorney for the Receiver had reviewed the Contracts before December 30, being twenty-eight days after the Receiver qualified. Thence appellant would not now be resisting allowance of attorneys' fees for services rendered to one of the managers when she, with appellant, were charged with a crime, because of the Receiver's neglect, in the Los Angeles Municipal Court.

h. Receiver's Fees.

At pages 24-28 the Receiver again relies upon the Trial Judge's excusing his non-compliance with local Rule 18(C), in an effort to reply to appellant's Statement of the Case (Op. Br. p. 37-43), then appellant asserts that: "A licensed real estate broker and real estate appraiser", (not a property manager) testified on direct examination that a 5% of gross income would be a reasonable fee. He does not deny that at R. 30 this same witness produced, on cross-examination, the Los Angeles Realty Board Schedule of Manager's Fees which provided, "Over \$2,000.00 the charge

's justification of the Receiver's fees which, among others, was that the Receiver was treated as though "he were accused of a crime". (R. 858). Appellant stands upon his Opening Brief statement and argument. Appellant asserts that the record will not justify the Trial Court's criticism of mistreatment of the Receiver, but that it will demonstrate a gross abuse of discretion in allowing the fees that were allowed. As previously noted at the opening of this Brief, we spelled out for the Receiver and his attorney how they can trace the many expenditures made by the Receiver, as partially enumerated at page 42 of the Opening Brief; and further, for example at R. 606-7. The Receiver contends at page 27 that he should receive \$3,000.00, or \$2,000.00 a month, because Richman's fee percentage would have been greater. Appellant was one of the trustees and trustors. The facts are that appellant during the period 1946 until the receivership liquidated the trust assets from \$375,000 to \$1,200,000. (R. 24). The law is that Receivers should be moderately compensated; are not entitled to be compensated on the basis private industry compensates. We again appeal from a Court of Appeals, as we did (Op. Br. 62): The Supreme Court (U. S.) has given notice on more than one occasion that Receivers and attorneys engaged in the administration of estates in the courts of the United States and in litigation affecting property

(pp. 35-37) do not disagree with the Federal statement of the rule.

The Receiver's plea that he had the burden of task of taking possession of unknown properties, familiarizing himself with them, installing his system of management and setting up his books, and then three months later being compelled to close the books might have merit had the Receiver, in fact, performed these services instead of becoming a full-time employee of Orange County. There is no evidence in the report that he closed his books, or ever rendered a report from his books; rather, he filed an accounting which is a compilation of receipts and disbursements and it is incomplete (to the extent at least he thought that he failed to collect rents of \$2,000.00, which were in fact \$1290.59); it failed to reveal surrender of the cash fund and the workmen's compensation deduction refund to Tidwell, and, generally is a mere schedule of receipts and disbursements from a checkbook.

i. Objections to Receiver's Report.

Respondent-Receiver fails to answer the specific charges (Op. Br. p. 43-44), pertaining to the Receiver's Report. By Footnote 7, he again by conclusion asserts: "The inaccuracies and unreliability of his (accountant's) brief." This conflict can best be resolved by a reading of the Receiver's Report commencing with

all acts, were performed by Miss Cosgrove. (R. 670). The specific assertion of inaccuracies and liability refers to the \$158.00 refund upon the 100 workmen's compensation insurance deposit. Neither the Report or Accounting anywhere makes reference to this asset which the Receiver, ex parte, determined was an asset of the purchaser Tidwell. Tidwell's counsel asserted (R. 670-671), the refund was turned over to Tidwell. The amount was uncertain at the time of the filing of the accounting but, the least the Receiver could have done was to report and account for it as being an undetermined refund. That he failed to do so is likewise can only be ascertained by an examination of his Report and his Schedules of receipts and disbursements.

j. Attorney's Fees.

The Receiver asserts (pp. 29-33), appellant "does not challenge as reasonable the fee of \$1800.00". A reading of Specification 7 (Op. Br. 48), Statement of Assets, (Op. Br. pp. 44-46), and Summary—one sentence argument (p. 66), will demonstrate the improbability of the contention. Again, attorney Whyte asserts as "defending the Receiver" (and apparently for himself), after appellant objected to a \$3,000.00 attorney fee, plus extraordinary, and objected to the accounting items especially those heretofore frequently

after the Receiver had refused to state what fee he would consider reasonable. As pointed out in the Concurring Brief, this Receiver and his attorney were fiduciaries who were required to fully disclose and carry the burden of explaining their Account and justifying the fees they sought. As to whether the attorney is entitled to be compensated for expending his time in going along with the Receiver to take possession of the apartment houses and taking over the bank account, before conferring, aiding in the accounting, and many other administrative services may *de novo* and originally be determined by this court. In *Campbell v. Green*, 112 F. 2d 143, this rule was stated concerning the power of the Court on Appeal concerning attorney fees:

“The court, either trial or appellate, is itself the expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees and *may form an independent judgment either with or without the aid of testimony of witnesses as to value.* (Emphasis added.) Citing C.J.S. Attorney & Client, Sec. 191(d).

Other Federal court decisions following the same line are: *Mercantile Commerce Bank & Trust Co. v. Southeast Arkansas Levee Dist.*, 8 Cir., 106 F. 2d 966; *Chants' & Manufacturers' Securities Company v. Johnson*, 8 Cir., 69 F. 2d. 940; *Blackhurst v. Johnson*, 8 Cir., 72 F. 2d. 644; *Federal Oil Marketing Corporation*

appellant submits that even the original \$1,000.00
 amount of the Trial Judge is excessive, the nature
 and manner of performance of services rendered by
 attorney for this Receiver, this whole record con-
 d.

Conclusion

The clear, apparent and obvious errors of the Trial
 Court's construction of the Settlement Agreement,
 as it had stated, at an adjourned pretrial hearing
 on September 27, 1954, that if it changed its ruling as
 to admission of evidence, it would appoint a Master
 to receive evidence, forces appellant to charge gross
 abuse of judicial discretion by the Trial Court through-
 out this proceeding. Appellant, whom the Trial Court
 found to be as "a very well educated and capable law-
 yer" (R. 8), and his counsel, have never observed such
 an abuse of judicial discretion. Their concept of judicial
 discretion is as set forth in *Langnes v. Green*, 282 U. S.
 51; 51 S. Ct. 243; 75 L. Ed. 520, 526:

"The term 'discretion' denotes the absence of
 a hard and fast rule. The *Styria v. Morgan*, 186
 U. S. 1, 9, 46 L. ed. 1027, 1033, 22 S. Ct. 731.
 When invoked as a guide to judicial action it
 means a sound discretion, that is to say, a discre-
 tion exercised not arbitrarily or wilfully, but with

From the inception of the receivership the Judge arbitrarily exercised his discretion. He refused to fix the amount of supersedeas bond, rather he directed the proposed attorney of the Receiver (who had then been unable to post his bond), to advise a bonding company to write the Receiver's bond and the premium would be paid out of the estate. Supersedeas is discretionary but the discretion must not be arbitrary. Here, the extraordinary remedy of receivership was imposed upon a successful member of the Bar, who had also successfully engaged in business ventures; who was a half owner of the 'Trust' and as Agent for the Trust had, during his agency, substantially increased the Trust's assets and who admittedly not appropriated any trust funds and, at most, was charged with obtaining an undue advantage because of his fees. In sequence, the Trial Judge extended the Receiver's time to comply with the court rules for filing his Report; the Trial Judge instructed the Receiver, contrary to long established local rule, to ask for a reasonable fee. After the Report was filed and when appellant questioned the correctness of the representations, the Trial Judge stated that he had been made to him before the Receiver was appointed and after appellant had objected to the Report because of the various benefits the Receiver had permitted Tidwell to obtain, the Trial Judge advised appellant: "No evidence will be taken concerning the app

ver when it became necessary to establish the
 pertaining to the Receiver's experience, qualifi-
 ns, previous rate of compensation, and truthful-
 of his representations. At the inception of the
 edings (R. 256), the Trial Judge asked appel-
 counsel: "What do you think is reasonable,
 Enright?" After counsel explained the events
 a caused him difficulty in suggesting a fee, the
 Judge stated: (R. 261) "We had better take
 vidence on what he (Receiver) did." Appellant
 esired to avoid such extensive hearings and short-
 ereafter counsel (R. 265-267), proposed a fee
 ht to be reasonable. Long thereafter, when the
 were being developed, the Court suggested to
 el that a career should not be made out of the
 and the Receiver was asked what fee he would
 der reasonable (R. 416), and he replied he would
 upon the Court to fix his fee. The facts pertain-
 o the representations made by the Receiver to the
 Judge were only partially developed because the
 Judge failed to rule on the Petition to Disqualify,
 he was a witness to the representations. There
 conflict in the evidence as to the Receiver's earn-
 apacity at the time he qualified by posting bond
 aking the oath to act as Receiver. His salary as
 ployee of the County of Orange, Assessor's Office
 full work week was \$355.00 per month. Imme-

his discretion when he awarded the Receiver a \$6, fee for less than three months services. Yet the Judge states in explanation of such order (R.

“Mr. Hallberg asked for less than he got the court. I increased, not the prayer of his tion, but the tenor of his testimony, because that he had not given any account to the el of having to account so fully in court, as well the accounting which he had prepared and f

The Trial Judge then discloses what appears his personal prejudices when he states (R. 859 the Receiver was treated like an embezzler; and 863) that this Receiver would not care to act a ceiver again because of the “criticism and acrr which attends being a receiver”.

There is an absence of what would be “. . . table under the circumstances and the law, . within the *Langnes v. Green* definition of discr in the November 19, 1954 Order of the Trial fixing fees and directing distribution of the fun maining in the hands of the Receiver. This is lik true of the *ex parte* conditional Order made b Trial Judge on September 9, 1955, which we no derstand has been approved by this Court. It possible to reconcile the addition of the Septem 1955 accounting procedure Order with the rema of the November 19, 1954 Order, such reconcil

ed to the amounts specified in the September 9, order.

the discretion of the Trial Judge was improper in the construction of the Settlement Agreement and division of the funds in the hands of the Receiver for the following reasons: The Court improperly 1) awards Tidwell the \$785.00 petty cash funds the Receiver had under his control; 2) awards Tidwell assets collected by the Receiver's managers before 11 a.m. on February 28, 1954 in the amount of \$59; 3) awards Tidwell a compensation refund in the amount of \$158.00; 4) awards Tidwell one-half of the liabilities in the amount of \$1877.50; taxes in the amount of \$4,952.77; catalytic smog units in the amount of \$2600.00, or a net to Tidwell of \$4715.13. The Court once exercised its discretion before decision-making evidence could not be received concerning assets and taxes, because Tidwell was bound by the Settlement Agreement and escrow carrying it out, and then if it changed its mind it would appoint a Master to take evidence. To construe the Settlement Agreement, Stipulations, and Escrow Instructions of the Receiver in such a manner was a gross error of law and not supportable by the "the reason and conscience of the Court", as those words are used in *Langnes v.*

The Court further had no jurisdiction or power to construe the Contract except for the purpose of

before the Court except to the extent the Receiver himself *ex parte* construed and acted under the Court's Order when leaving the insurance refund, petty cash and the rents for Tidwell's agent Udall to obtain.

Appellant prays that the Order and Judgment of the Trial Court dated November 19, 1954, as previously modified by the Order of September 9, 1955, be reversed; that this court determine that the present Contract of the parties requires the condemnation of surcharging of the Receiver, in accordance with the accounting set forth on pages 66, 67 and 68 of Appellant's Opening Brief; and that this Court fix the amount of fees payable to the Receiver and the amount payable to the attorney for the Receiver, both of which be subject to the costs incurred by appellant upon this appeal.

Dated: October 4, 1955.

Respectfully submitted,
BRADY, NOSSAMAN and WALKER
and
JOSEPH T. ENRIGHT
By: JOSEPH T. ENRIGHT
Attorneys for Appellant.

IN THE
United States
Court of Appeals
For the Ninth Circuit

ED MERCURY MINES COMPANY,
Appellant,

vs.

DLEY MINING COMPANY,
Appellee.

BRIEF OF APPELLANT

*Appeal from the United States District Court
for the District of Idaho, Southern Division*

PAUL S. BOYD,

P. O. Box 2084, Boise, Idaho

E. H. CASTERLIN,

P. O. Box 1384, Pocatello, Idaho

DALE CLEMONS,

Idaho Building, Boise, Idaho

WILLIAM LANGER,

Boise, Idaho

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12 Am. Jur. 749
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17 C.J.S. p. 695
17 C.J.S. p. 702
17 C.J.S. p. 707
46 C.J. 1224, note 60
88 C.J.S. p. 21, note 53
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IN THE
United States
Court of Appeals
For the Ninth Circuit

UNITED MERCURY MINES COMPANY,
Appellant,
vs.
BRADLEY MINING COMPANY,
Appellee.

BRIEF OF APPELLANT

*Appeal from the United States District Court
for the District of Idaho, Southern Division*

STATEMENT OF CASE

United Mercury Mines Company, hereafter called
United, brought this action against Bradley Mining
Company, hereafter called Bradley, alleging that by
written instrument dated December 31, 1941,
United conveyed to Bradley the Meadow Creek and
Lucky groups of mining claims in Valley County,
Idaho, and in consideration thereof Bradley agreed
to pay United a royalty of five per cent on all net

said mining claims for a period of nine hundred and ninety-nine years and thereafter (R 3-6); that in 1949 Bradley, at its own costs, constructed and operated a smelter on said claims and has always owned the Yellow Pine smelter in which it has smelted concentrates produced from the ores taken from said claims and has sold the saleable products therefrom to unknown purchasers for various and unknown sums of money (R 8); that Bradley is obligated to pay royalty on the saleable products from the smelter on the basis of net revenue as defined in the agreement, which it refuses to do (R 9); that Bradley contends it is only obligated to pay royalty on the concentrates smelted in the Yellow Pine smelter on the basis of net smelter returns as defined in the agreement (R 9), using a formula especially devised by it for that purpose (R 9); that the difference between the royalties based on the net revenue and the royalties based on the net smelter returns exceeds \$10,000 which is owing United (R 10); that an actual controversy exists between the parties as to the provisions of the agreement applicable to the computation of the payment of royalties and the nature and extent of the obligation of Bradley to furnish information to assure United that it is receiving the royalties to which it is entitled (R 10); and praying judgment interpreting the provisions of the agreement, decreeing that Bradley pay royalties on the saleable products from the smelter on the basis of net revenue, requiring Bradley to furnish the information requested.

ing therein of concentrates from ores taken from the claims, the sale of the saleable products from the smelter to purchasers, and the existence of the controversy; by denying its obligation to pay royalty on the basis of net revenue from the sale of products from the smelter, that any money is due United on account of royalties, and that it has refused to give the requested information; and alleging that the royalty to which United is entitled is to be computed on the basis of net smelter returns as defined in the agreement on the concentrates from ores taken from the claims before they are smelted and as a second affirmative defense that any other method of computation would be unjust, would result in taking property unlawfully, would unjustly enrich United and would be contrary to the terms of the agreement as interpreted by United (R 41-50).

After the issues were thus joined, United moved for summary judgment like the second affirmative defense (R 50); Bradley moved for judgment on the pleadings (R 51); and United moved to strike certain portions of the affidavits supporting the motion for summary judgment (R 1, 112).

On October 10, 1952, the court denied all of the motions and in its order stated, "I will not set a definite date for trial of the case at this time in the hope that the parties may be able to adjust their differences. But it will be set for some early date if that

At the pre-trial Bradley stated that the following issues remained to be determined:—(1) should royalty be computed on the basis of net smelter returns (R 198); (2) if so, shall the royalty be computed as Bradley has computed them in the past upon the value of the concentrates, relating those values to what might reasonably be expected from sales of independent smelters, or should they be computed on the basis of the returns from smelted products less normal smelter charges, and what are net smelting charges (R 198); (3) has Bradley fairly calculated and apportioned royalties upon the basis it has followed in the past (R 199); (4) if royalties are to be based on the amortization plan, what is the fair rate of depreciation, what is the fair return upon the investment to be charged to the royalty, and what is to be deducted (R 199); if they deny it (that Bradley has paid on the basis of net smelter returns) (R 199) then we are put to our proof and this has been done by United (R 201).

At the pre-trial United stated the additional issues remaining unresolved,—(1) do Bradley's books correctly show the amount of net smelter returns on all concentrates processed at the smelter used in its computation of royalty (R 200-201); (2) has Bradley computed net smelter returns on the same basis as independent smelters (R 201).

At the time of the pre-trial the record disclosed no issue of law then pending. The record disclosed no issue of fact.

February 21, 1955, United filed Notice of Appeal (R 191) and on the same day filed a Cost Bond (R 191).

JURISDICTION

Jurisdiction of the District Court is based upon diversity of citizenship, United being a citizen of Idaho and Bradley being a citizen of California (R 3, 4) and the amount in controversy which exceeds, exclusive of interest and costs, the sum of \$3,000.00 (R 5). Title 28, Section 1332 United States Code. This court has jurisdiction to review the case on appeal by reason of Title 28, Sections 1291 and 1294, United States Code and Rule 73 of the Federal Rules of Civil Procedure.

STATEMENT OF FACTS

On December 31, 1941, United, as the first party, and Bradley, as the second party, entered into a written agreement a true copy of which is attached to the Complaint as Exhibit 1 (R 141, 146), whereby United conveyed to Bradley the Meadow Creek and Hennessy claims of mining claims in Valley County, Idaho, (R 141, 146) and

For and in consideration of the premises and the conveyance and assignment of the above described properties, Bradley, for itself, its successors,

smelter returns, net revenue, and net mint returns, as defined herein, upon and for all minerals, metals or values, of any and every kind and character, mined, extracted or taken from the above described mining claims, or any part thereof from any lands, grounds or claims, lodes or deposits, within the exterior boundaries of the groups of claims; the payment of said five per cent (5%) royalty to begin with the first return received on concentrates shipped from Cascade, Idaho, after Midnight, December 31, 1941, and to continue thereafter for nine hundred and ninety-nine (999) years and as long thereafter as minerals, ores or values shall be extracted, mined or taken from the above described property, at all times and in the manner hereinafter provided (R 15).

The agreement also provides:

“By net smelter returns, as used herein, is meant the amount received from the smelter from concentrates and all ores, concentrates, metals or values shipped to a smelter, it being understood that the smelter will deduct its normal smelting charges and charges for railroad freight from Cascade, Idaho, to the smelter shall also be deducted.

By net revenue, as used herein, is meant the amount paid by any purchaser from the sale of concentrates, ores, metals or values shipped to

By net mint returns, as used herein, is meant the amount paid by any United States Mint, branch or agency thereof, less all shipping and marketing costs from Cascade, Idaho.

It is agreed that in addition to the deductions of railroad freight from Cascade, Idaho, to the smelter, market, or mint, that Bradley shall also be allowed to deduct from the net smelter, market, or mint returns Two Dollars and Fifty Cents (\$2.50) per ton for each ton of concentrates, ores, metals, or values hauled or shipped from the above-described property to Cascade, Idaho, the said sum to be deducted from the net smelter, market or mint returns before net royalty herein provided for computed.

It is also agreed that in the event that concentrates or bullion are hauled or shipped by truck to smelter, market, or mint beyond Cascade, Idaho, there shall be deducted from the net smelter, market, or mint returns the amount for trucking that it would have cost to ship the same by railroad from Cascade, Idaho, to the smelter, market, or mint to which the same are trucked.

Should a smelter or other reduction works be erected between the mining property herein conveyed and Cascade, Idaho, then there shall be deducted from the net smelter or reduction returns a fair charge for trucking from the mine to such

cade, McCall, or any nearby place from which
ment is made by rail.

The above covenants on the part of Bradl
pay the royalty herein agreed to be paid sha
considered and held to be covenants running
the lands, grounds, minerals, ores, values,
mining claims hereby conveyed to Bradley
shall be binding upon Bradley, its successors
assigns, forever.” (R 17-18).

This agreement also provides that:

“It is agreed that Bradley shall furnish U
all necessary information that United may re
to assure it that it is receiving the royalty to v
it is entitled hereunder, and that United shall
the right to inspect, examine and make copi
the books and records of Bradley and suppo
data at least every six (6) months so as to e
United to satisfy itself that it is receiving its
er royalties.” (R 16)

and that

“Except that in the event Bradley, its su
sors and assigns, fails or refuses to pay any r
ties herein reserved when the same shall be
due that the said United shall have a mortgag
in, to, and upon all of the above and foregoi
scribed properties to secure the payment of
grants and Bradley does hereby mortgage the

hereinafter described, and the whole thereof, to secure the payment of said royalty." (R 19).

United has conveyed to Bradley all of the said mining claims (R 142, 146).

From December 1, 1941, to July 1949, Bradley extracted principally gold, silver, antimony and tungsten from the claims (R 146) and shipped the concentrates to smelters or reduction plants in which it had interest and paid United royalties on the basis of smelter returns (R 147).

During the year 1949, Bradley built the Yellow Pine smelter on the claims at its own costs. Bradley owned the smelter at all times. (R 142, 146).

The Yellow Pine smelter went into operation in 1949 (R 142, 146), and thereafter 45%—based on values—of the concentrates produced from the ore mined on the claims was shipped to outside smelters in which Bradley had no interest (R 147)) and royalty thereon was paid on the basis of net smelter returns as defined in the agreement (R 143, 147), the remaining 55%—based on values—of the concentrates was smelted at the Yellow Pine smelter (R 144, 148).

As to the concentrates shipped to the outside smelters passed from Bradley to them upon receipt of the smelter returns accompanied by the settlement statements exemplified by Exhibit 2 (R 143, 148; 29-31).

Bradley has sold saleable products from the Yellow Pine smelter to purchasers thereof and has received therefor a gross of \$5,129,607.73 (R 172) from which is deductible marketing and shipping costs from Cascade, Idaho, as provided in the agreement (R 173).

Bradley has not paid United the royalty of 10% based on these gross receipts from the sales of the said saleable products from the Yellow Pine smelter less the marketing and shipping costs from Cascade, Idaho (R 145, 149).

Bradley has paid United on account of the royalty due and owing from the operations of the Yellow Pine smelter various sums of money determined by computing the value of the concentrates on the grade at the mouth of the roaster and relating these values to what might reasonably be expected from a sale of the same to independent smelters (R 198). This method of computation involves no sale of the concentrates or the smelted products therefrom (R 148).

SPECIFICATIONS OF ERROR

- I. The District Court erred in dismissing the action.
- II. The District Court erred by not interpreting the contract in question in its final judgment either as contended by the Plaintiff or as contended by the Defendant.
- III. The District Court erred by ordering the defendant to pay the plaintiff the royalty due and owing from the operations of the Yellow Pine smelter.

upon the net revenue provision of the contract which merely disposes of the accounting feature and not the main issue of the interpretation of the contract.

The District Court erred in concluding that there is no genuine issue as to any material fact in this action.

The District Court erred in concluding that there is no controversial question of fact to be submitted for trial by the Court.

The District Court erred in concluding that the defendant is entitled to judgment as a matter of law.

The District Court erred in drawing the foregoing conclusions and in entering the judgment herein without first making and entering findings of fact upon which said conclusions and said judgment is based.

The District Court erred in holding and in entering its Memorandum Decision of October 10, 1952.

The District Court erred in holding and entering the Memorandum Decision of April 9, 1954.

The evidence is wholly insufficient in any of the foregoing conclusions to support the judgment entered herein.

if so, which provision of the agreement is applicable to the operation of the Yellow Pine smelter?

Has Bradley paid royalties in compliance with applicable provision of the agreement?

Is United entitled to an accounting?

ARGUMENT

I

Assignments of Error numbered I, II, IV, V, VII may be condensed in the following restatement and may be so discussed. It was error to enter a judgment of dismissal without interpreting the content either as contended by United or as contended by Bradley after having entered findings of fact or then pending genuine issues of fact.

After the pleadings were closed and after all issues of law had been disposed of the cause came on for trial under Rule 16.

The judgment of dismissal could not have been entered then by the court under Rule 41 (b) because (1) the defendant made no motion for dismissal on any of the grounds therein contained, (2) the defendant made no motion after the plaintiff had completed the presentation of its evidence, as no opportunity was afforded to give evidence at any trial, (3) the court never tried any of the issues of fact pending, (4) no findings of fact were made and entered as provided in Rule 52(a).

ment had previously been denied and the same not been renewed, and there were pending genu-issues of fact that had not been resolved.

the pre-trial hearing the simplification of issues a matter of discussion. Bradley then stated cer-issues of fact that remained undetermined and ed stated certain issues of fact in the same condi-These were genuine issues. There never was a of any of these issues of fact, the same were not itted on an agreed statement of facts and there no confession of judgment with respect to any ese issues.

hen issues of fact remain undetermined, they be determined

88 C.J.S. p. 21, note 53

89 C.J.S. p. 418, note 54

46 C.J. p. 1224, note 60

Clair et al v. Sears Roebuck & Co., 34 F. Supp.
559

Van Wormer v. Champion Paper & Fiber Co.,
28 F. Supp. 813

Refractolite Corp. v. Prismo Holding Corp., 25
F. Supp. 965

roof

Frank Adam Electric Co. v. Westinghouse Elec-

presented by sworn testimony or by agreement of counsel

89 C.J.S. p. 373, note 36.

In the state of the record at the time of the pre-trial conference, it was the duty of the court to set the issues for trial and thereafter to pass upon all of the issues raised by the pleadings and the evidence, and failure to do so is error.

89 C.J.S. p. 418

McCaffrey v. Elliott (CCA Fla)
47 F (2) 72.

Any decision on the issues of fact must be based on the evidence admitted in the case

89 C.J.S. p. 417, note 46

and this evidence must be followed by findings of fact necessary to sustain the judgment

Rule 52(a).

The result is that there were genuine issues of fact. If there was no trial, there were no findings of fact, and there is no judgment interpreting the contract either as contended by United or as contended by Brac

It is axiomatic that contracts must be construed

Wright v. Village of Wilder, 63 Idaho 122,
117 P (2) 1002
12 Am. Jur. p. 772
17 C.J.S. p. 707

It is not the province of the court to alter a contract
construction or to make a new contract for the
parties; its duty is confined to the interpretation of
the one which they have made for themselves, and,
in the absence of any ground for denying enforce-
ment, to enforcing or giving effect to the contract as
made, that is, to enforce or give effect to the contract
made without regard to its wisdom or folly, to the
apparent unreasonableness of the terms, or to the
fact that the rights of the parties are not carefully
guarded, as the court cannot supply material stipula-
tions or read into the contract words which it does not
contain so as to change the meaning of the words con-
tained in the contract. The court will not make a con-
tract for the parties where they have not made a
contract or where the alleged contract is not enforce-

Sorensen v. Larue, 43 Ida. 292,
252 P. 494

Weed v. Idaho Copper Co., 51 Idaho 753,
10 P (2) 613
17 C.J.S. p. 702

The intention of the parties is to be deduced from the language employed by them, and the terms of the contract, where unambiguous, are conclusive, and the rule making the terms of the contract conclusive where unambiguous is controlling, in the absence of averment and proof of mistake, the question being what intention may have existed in the minds of the parties but what intention is expressed by the language used.

Farm Credit Corp. v. Meierotto, 50 Idaho
298 P. 378

Ehlinger v. Washburn Wilson Seed Co., 51
Idaho 17, 1 P (2) 188
1 P (2) 188
17 C.J.S. p. 695

The contract in question falls entirely within the foregoing provisions and can be interpreted to conform to all of its provisions without violating any of them.

The contract provides that Bradley shall pay a royalty of five per cent (5%) on all net smelter returns, net revenue, and net mint returns, as defined herein, upon and for all minerals, ores, metal values, of any and every kind and character, mined, extracted or taken from the said mining claims' (15), and further provides for royalty to be paid on or before the 20th day of the calendar month :

s are *received* by Bradley, copies of all sales returns to be furnished United by Bradley" (emphasis supplied). It will be admitted that net mint returns not here involved so that our discussion may be limited to net smelter returns and net revenue.

It is also apparent that the contract presumes a sale of minerals, ores, metals or values because it is expressly provided that the royalties are to be paid on receipt of the money paid Bradley from the sale. It is also conceded that Bradley owns all of the minerals, ores, metals or values until the same are sold or disposed of. It is impossible for Bradley as owner to sell to itself as purchaser any of the said minerals taken from the claims. Bradley has not paid royalties to United until it has received money from the sale of minerals, ores, metals or values. The lower court recognized in its memorandum decision of October 10, 1952, that Bradley does not sell any concentrates to itself and stated: "In the instances we are concerned with here Bradley does not sell any concentrates to the smelters nor does it sell any concentrates to itself". In the definition of net smelter returns as used herein is "meant the amount *received* (emphasis supplied) from the smelter from any and all concentrates, metals or values shipped to smelter

The express terms of this definition precludes Bradley from paying royalties on the concentrates to the Yellow Pine smelter on the basis which it con-

ucts are sold. It would then appear that net smelter returns as defined in the contract is not applicable to the present situation as pointed out by the lower court in its memorandum decision of October 10, 1952.

The one question left would be whether or not net revenue as defined in the contract is applicable to the operation at the Yellow Pine smelter. An analysis of the definition of net revenue indicates that by net revenue is meant "the amount paid by *any purchaser* from the *sale* of concentrates, ores, *metals* or values shipped, taken or produced from said properties, (emphasis supplied).

It will be conceded, we believe, that the end product from the smelting operation at the Yellow Pine smelter produces metals and values and that the metals and values are sold by Bradley to purchaser. It is apparent that the situation is covered in detail by the definition of net revenues as contained in the contract.

By reason of the foregoing, the lower court erred by dismissing the action without interpreting the contract in question and without interpreting the same as contended by United; by dismissing the action without a trial when genuine issues of fact were pending; by entering a judgment of dismissal without findings of fact, the judgment being on the merits.

led to have an accounting from the defendant
d upon the net revenue provision of the contract
h merely disposes of the accounting feature and
the main issue of the interpretation of the con-
5.

y the prayer of its complaint United asked the
t to "require an accounting by the defendant to
plaintiff and, upon such accounting being had,
plaintiff have judgment against the defendant
any amount found due, owing and unpaid ***"

2). In its judgment the lower court decided that
plaintiff was not entitled to have an accounting
n the defendant based upon the net revenue pro-
n of said contract but only, if at all, upon the
smelter returns provision of said contract. It is
ossible to determine what the court meant by the
ression "if at all." The fact remains that the court
ed United the right to an accounting on either
ry. Regardless of which theory prevailed United
entitled to an accounting and it was error to pre-
e United from having such an accounting in
t under the state of the record.

was error to deny United an accounting in this

III

ecification No. VI is that the district court erred
oncluding that the defendant is entitled to judg-
t as a matter of law

issues had been determined and as long as the controversy remained unresolved neither the facts contended by United nor the facts contended by Bradley could be accepted as the final facts from which the court could conclude that the case should be dismissed as a matter of law. The law cannot act upon a state of facts until the same are resolved and established.

IV

Specification No. X is, "The district court erred in holding and in entering its memorandum decision on October 10, 1952" (R 136). The only matters before the court at that time were the motion of United to strike the affirmative defense (R 50) ; the motion of Bradley for judgment on the pleadings (R 51) ; the motion of United to strike certain portions of affidavits supporting the motion for summary judgment (R 71, 112). The court acted upon these motions and denied all of the same (R 140). The court's decision should have ended with the denial of the motions and should have gone no further as nothing else was then pending before the court. Further proceedings were necessary in order that the court could determine if the net revenue provision or the smelter returns provision should form the basis for computing royalties and these further proceedings should have been as contended above with respect to trial, proof and findings.

Bradley is entitled to pay royalties on a quantum meruit basis without the necessity of an accounting. The lower court expressly stated in this decision: "It would seem that if the court must determine this matter it would have to be on the principle analogous to quantum meruit for the court obviously cannot make a contract for the parties." (R 139). By making this statement the court attempted to set aside the agreement between the parties and substitute therefor a new agreement while stating that it had no authority to so do. It was error for the court to do more in its decision of October 10, 1952, than to act upon the motions then pending before it.

V

The specification of Error No. XI is that the district court erred in holding and entering the memorandum decision of April 9, 1954 (R 164).

When this memorandum decision was issued there was nothing before the court except objections to certain interrogatories directed to Bradley Company and a motion on its part for a protective order limiting the scope of an inspection of records desired by the plaintiff (R 164). In passing upon the objections to the motion the court said: "I think, therefore, that the information sought by United may have been material, and the objections to the interrogatories

erred respecting the other matters contained in decision.

VI

Specification No. XII is that the evidence is wholly insufficient to support the conclusions or the judgment entered herein. As to this specification, the court by its judgment of dismissal assumed that the facts, established by proof, did not warrant the plaintiff in having an interpretation of the contract that would not entitle the plaintiff to a decree that the proper legal method of determining the amount of royalty was by the use of net revenue as defined in the contract; that the plaintiff was entitled to an accounting on any theory. As a matter of fact there was no evidence of any kind and consequently the conclusions and judgment of the court are not sustained by any evidence whatever.

CONCLUSION

The trial court erred in dismissing the action where genuine issues of fact remained unresolved.

The trial court erred in denying United States accounting under the net revenue provisions of the contract and further erred in denying United States accounting under any provision of the contract.

The trial court erred in failing to interpret the contract and has attempted to impose a new and different agreement upon the parties, notwithstanding

ut doing violence to any other provision of the
act.

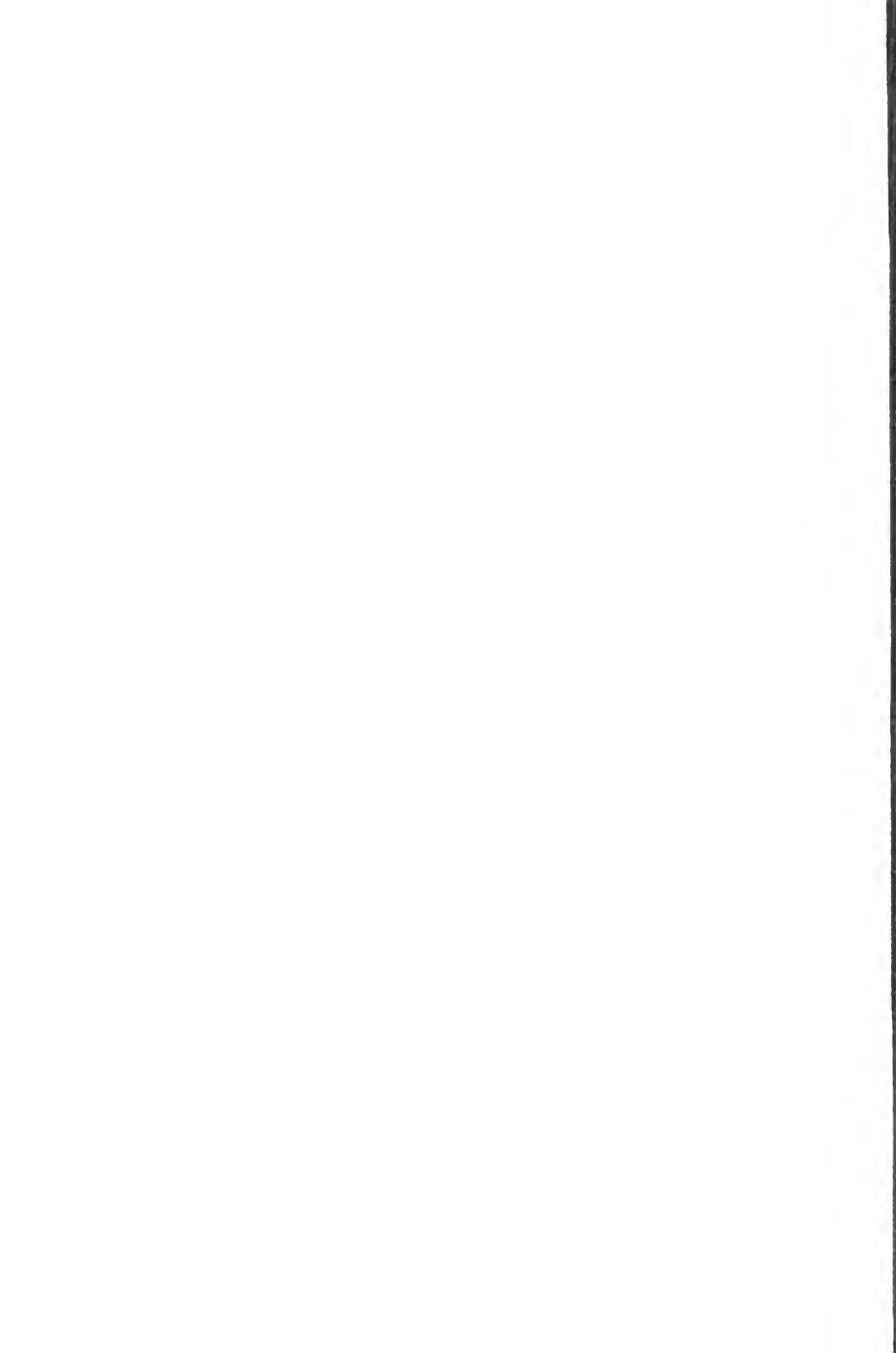
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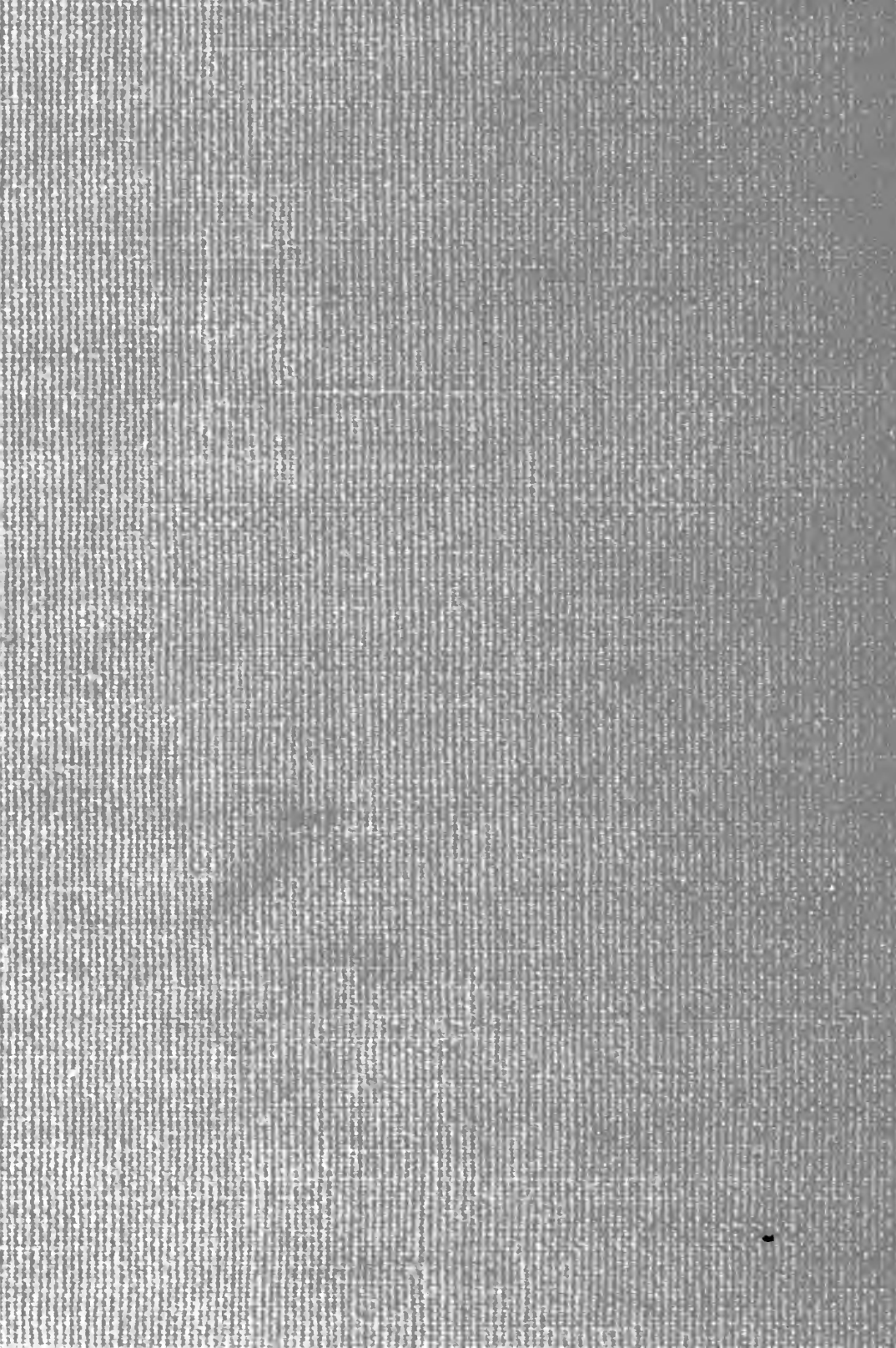
PAUL S. BOYD,
Boise, Idaho,

E. H. CASTERLIN,
Pocatello, Idaho,

DALE CLEMONS,
Boise, Idaho,

WILLIAM LANGER,
Bismarck, N. Dakota,
and Washington, D. C.,
Attorneys for Appellant.





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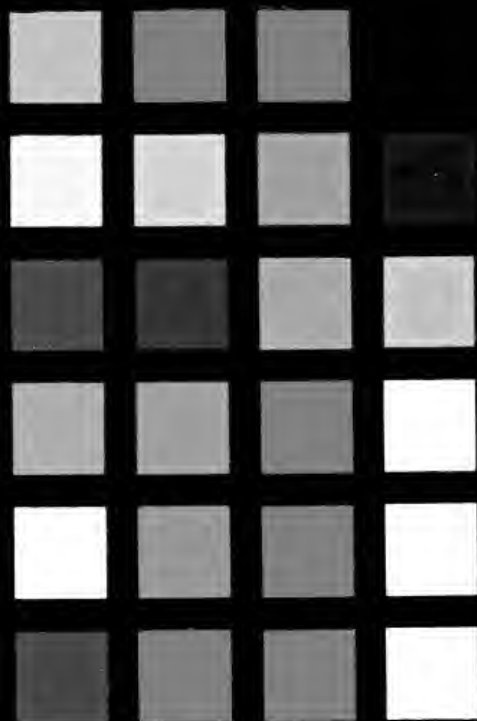
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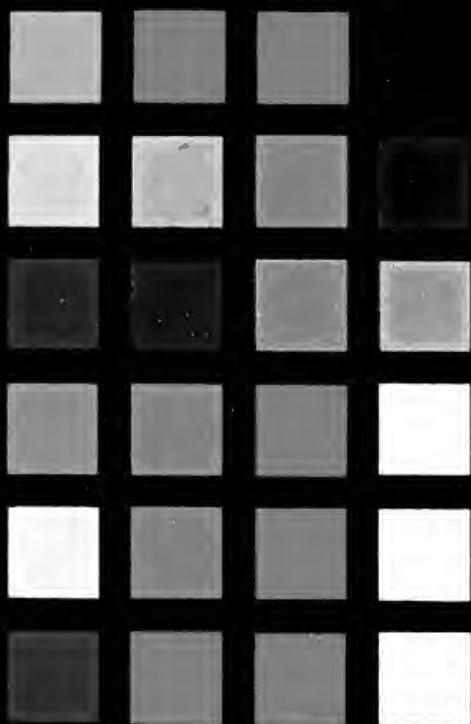
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